

CLERK'S OFFICE

P.V.

125-

175244

Sc.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 274

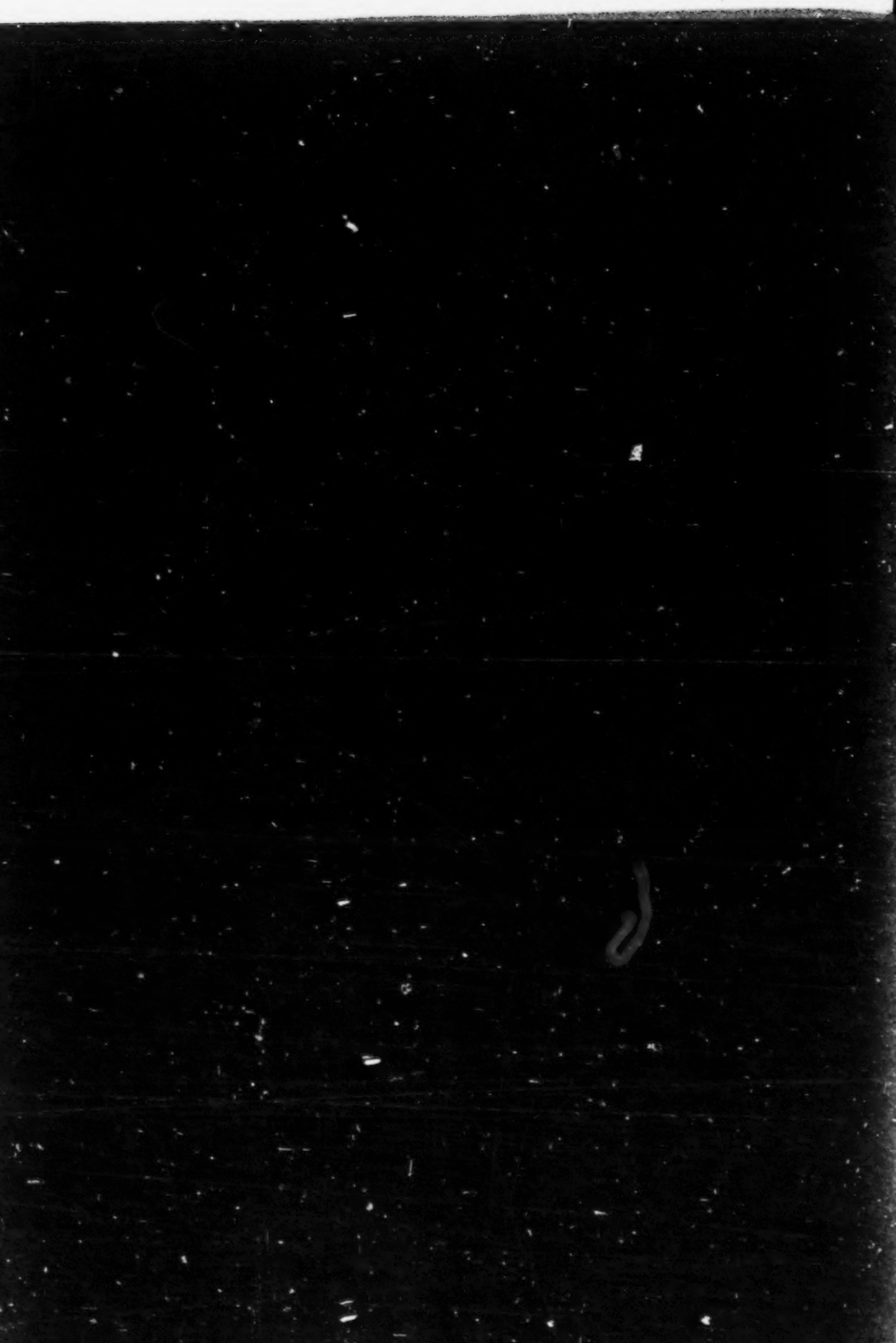
NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE SANDS MANUFACTURING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 13, 1938
CERTIORARI GRANTED OCTOBER 10, 1938



INDEX

	PAGE
Certificate of National Labor Relations Board.....	1
Stipulation as to Contents of Printed Record.....	4
Charge	6
Complaint	7
Affidavit of Service	11
Answer of Sands Manufacturing Company	11
Designation of Trial Examiner	24
Decision, Findings of Fact, Conclusions of Law, and Order	25
Intermediate Report	42
Respondent's Exceptions to Intermediate Report.....	63
Transcript of Evidence	100

TESTIMONY FOR THE BOARD

	DI.	CR.	REDI.	RECR.
Garry Sands	106			
Harry F. Potter....	120	125	131,161	137,166
Joseph Blaha	167	169	174	174
William Brandt	175,185	178		
Edward Stack	185	187	195	
William Brandt (recalled)		195	196	197
John O. Sweitzer ..	197	200	205	
Henry J. Meyer	205	207	212	
Charles E. Rudd	214	233	249,253	252,253
Tony J. Moraco	255	264	293	297
Jack Norman	298	304		
Albert Farrell	313	317	320	321
Emil Tulow	322	325		
Frank Dolish	326	331	335	336

TESTIMONY FOR THE BOARD—(Continued)

	DI.	CR.	REDL.	RECR.
Frank Pansky	351	357	382,386 387	385,387 390
Elmer Ochs	390	392		
Mike Hudak	394	398	399	

TESTIMONY FOR RESPONDENT

	DI.	CR.	REDL.	RECR.
Hilliard J. Sands	401	461	481	482
George Carbeck, Sr.....	483	489	492	492
George Carbeck, Jr.	493	498		
Edward McKiernan	503	504		
Charles Shuman	506	509		
Garry Sands	511	536	554	

REBUTTAL TESTIMONY FOR THE BOARD

Charles Rudd (recalled)....	559	562	563	
Tony Moraco (recalled).....	564	565		
John O. Sweitzer (recalled)	565			
Albert Farrell (recalled)....	568			
Frank Pansky (recalled)....	569			
Lada Jindra	572	573	579	580

EXHIBITS

	PAGE
Board's Exhibit No. 3—Respondent's Annual Report to The Tax Commission of Ohio	584
Board's Exhibit No. 4—Contract between Respondent and International Association of Machinists dated Sept. 3, 1935.....	586
Board's Exhibit No. 5—Demands of Employees upon Respondent dated May 13, 1935.....	591
Respondent's Exhibit No. 1-A—Stipulation Concerning Business Operations of Respondent.....	592
Respondents Exhibit No. 3—Employees' Petition to Respondent	597
Respondent's Exhibit No. 4—Contract between Respondent and Employees dated May 19, 1934....	598

EXHIBITS (Cont.)

	PAGE
Respondent's Exhibit No. 5—Demands of Employees upon Respondent dated June 15, 1935	600
Respondent's Exhibit No. 8—Cancellation of Con- tract between Respondent and International Association of Machinists	602
Respondent's Exhibit No. 9—Agreement Proposed by Employees to Respondent	603
Stipulation Concerning Filing of Respondent's Answer and Cross Petition for Review.....	606
Proceedings in U. S. C. C. A., Sixth Circuit.....	607
Minute entry of argument and submission.....	607
Decree	607
Opinion, Allen, J.....	607
Clerk's certificate.....	615
Stipulation and addition to record.....	615
Stipulation concerning addition to record.....	615
Petition for enforcement of order of Board.....	615
Respondent's answer to petition and its cross-petition for review.....	619
Order allowing certiorari.....	634

IN THE
United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

OCTOBER TERM, 1936

No. 7767

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

v.

THE SANDS MANUFACTURING COMPANY,
A Corporation,
RESPONDENT.

**CERTIFICATE OF NATIONAL LABOR
RELATIONS BOARD**

(Filed June 24, 1937)

The National Labor Relations Board, by its secretary, duly authorized by Section 1 of Article VI of the Rules and Regulations of the National Labor Relations Board, effective the 28th day of April, 1936, does hereby certify that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding before said Board entitled "In the Matter of The Sands Manufacturing Company and Mechanics Educational Society of America," the same being case No. C-33 before said Board, said transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered and including also the findings and order of the Board.

Fully enumerated, said documents hereto attached are as follows:

1. Copy of charge made by Mechanics Educational Society of America, verified October 14, 1935

Certificate of National Labor Relations Board

2. Copy of complaint and notice of hearing, issued November 12, 1935.

3. Copy of motion for continuance and affidavit, filed by respondent on November 14, 1935.

4. Copy of ruling of Regional Director denying motion for continuance, dated November 15, 1935.

5. Copy of respondent's motion for extension of time within which to file its answer, dated November 16, 1935.

6. Copy of ruling of Regional Director granting motion for extension of time within which to file answer, dated November 16, 1935.

7. Copy of respondent's motion for extension of date of hearing, filed November 16, 1935.

8. Copy of ruling of Regional Director granting motion for extension of date of hearing, dated November 16, 1935.

9. Copy of respondent's answer, filed November 20, 1935.

10. Copy of affidavit of service of all pleadings upon Mechanics Educational Society of America, dated November 21, 1935.

11. Copy of order designating Saul Danaceau Trial Examiner.

12. Documents listed hereinabove under items 1 to 11 inclusive, are contained in Board's Exhibit 1, included in the following item:

Copy of stenographic report of hearing before Saul Danaceau, Trial Examiner, the 25th, 26th, 27th, 29th and 30th days of November, 1935, including all exhibits or copies thereof introduced in evidence.

13. Copy of Intermediate Report, dated December 26, 1935.

14. Copy of Exception to Ruling of Trial Examiner by Mechanics Educational Society of America, filed January 4, 1936.

15. Copy of respondent's Exceptions to Intermediate Report, filed January 14, 1936.

16. Copy of application for oral argument on respondent's Exceptions, filed January 14, 1936.

Certificate of National Labor Relations Board

17. Copy of respondent's application for leave to submit brief and for oral argument on merits, filed January 14, 1936.

18. Copy of notice for argument before Board, dated January 14, 1936.

19. Copy of Decision—Findings of Fact, Conclusions of Law and Order of the National Labor Relations Board, dated April 17, 1936, together with affidavit of service and United States Post Office return receipt therefor.

IN TESTIMONY WHEREOF, The Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 22nd day of June, 1937.

(SEAL)

(Signed) BENEDICT WOLF, *Secretary*,
National Labor Relations Board.

IN THE
United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

OCTOBER TERM, 1936

No. 7767

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

v.

THE SANDS MANUFACTURING COMPANY,
A Corporation,
RESPONDENT.

STIPULATION

(Filed July 29, 1937)

It is hereby stipulated and agreed by and between the attorneys in the above entitled case that the printed record in said case consist of the following:

1. The transcript of testimony as certified to the Court by the National Labor Relations Board in the matter before it known as Case No. C-33;

2. Documents included in Board's Exhibit 1, as follows: Charge, Complaint and Notice of Hearing, Answer and Order Designating Trial Examiner;

3. The Intermediate Report dated December 26, 1935; Respondent's exceptions to the Intermediate Report filed January 14, 1936; and the Decision, Findings of Fact, Conclusions of Law, and Order of the National Labor Relations Board dated April 17, 1936;

4 (a). Respondent's Exhibit 3, which is the employees' petition to the respondent in April or May of 1934;

Stipulation

(b) Respondent's Exhibit 4, which is the May 19, 1934 contract between respondent and its employees;

(c) Board's Exhibit 5, which are the demands of the employees upon respondent in their letter dated May 19, 1935;

(d) Respondent's Exhibit 9, which is the agreement proposed by the employees to the respondent in June, 1935;

(e) Respondent's Exhibit 5, which is the contract between respondent and its employees dated June 15, 1935;

(f) Board's Exhibit 4, which is contract between respondent and International Association of Machinists dated September, 1935;

(g) Respondent's Exhibit 8, which is the cancellation of the contract between respondent and International Association of Machinists;

5. Board's Exhibit 3, which is respondent's annual report filed with the Tax Commission of Ohio;

6. Respondent's Exhibit 1, which is a stipulation with respect to the business operations of respondent.

It is further stipulated and agreed that none of the exhibits need be printed except those described above and included in Board's Exhibit 1, but shall be considered along with and part of the record, with the privilege reserved to either of the parties to have any of the exhibits printed and included in the printed record in the event that appeal is later taken.

Dated at Washington, D. C., this 16th day of July, 1937.

(Signed) ROBERT B. WATTS,
Associate General Counsel,
National Labor Relations Board.

Dated at Cleveland, Ohio, this 23rd day of July, 1937.

(Signed) STANLEY & SMOYER,
Attorneys for Respondent,
Union Trust Bldg.,
Cleveland, Ohio.

Approved:

(Signed) XEN HICKS,
Circuit Judge.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
EIGHTH REGION

In the matter of

SANDS MANUFACTURING COMPANY,

and

THE MECHANICS EDUCATIONAL SOCIETY,
OF AMERICA.

} Case No. C-2

CHARGE

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that THE SANDS MFG. Co. has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections 1, 3, and 5 of said Act, in that

1. Through its officers and officials it has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7.

3. That they have practiced discrimination in regard to hiring or tenure of employment and the term and condition of employment to discourage membership in the Mechanics Educational Society of America, a labor union.

5. That the officers of the Sands Manufacturing Company have refused and continued to refuse to bargain collectively with the representatives of its employees, subject to the provisions of Section 9 (a).

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

MECHANICS EDUCATIONAL SOCIETY OF AMERICA,
(Signed) H. F. POTTER.

Subscribed and sworn to before me this 14th day of October, 1935.

(SEAL)

ELIZABETH A. WELLS, *Notary Public.*

My commission expires February 20, 1938.

COMPLAINT

It having been charged by the Mechanics Educational Society of America, Cleveland, Ohio, (hereinafter called the M.E.S.A.) that The Sands Manufacturing Company, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by the Regional Director for the Eighth Region, as agent of the National Labor Relations Board designated by National Labor Relations Board Rules and Regulations, Series 1, Article IV, Section 1, hereby alleges the following:

1. The respondent is and has been since February 7, 1920, a corporation organized under and existing by virtue of the laws of the State of Ohio, having its principal office and place of business in the Village of Beachwood Village, County of Cuyahoga, and State of Ohio, and is now and has been continuously for a long period of time engaged at its plant in the City of Cleveland, County of Cuyahoga, State of Ohio, (hereinafter called the plant of respondent) in the production, sale and distribution of gas and kerosene water heaters.

2. The respondent in the course and conduct of its business causes and has continuously caused large quantities of the raw materials used in the production of its gas and kerosene water heaters to be purchased and transported in interstate commerce from and through states of the United States other than the State of Ohio to the plant of respondent in the State of Ohio, and causes and has continuously caused the preponderant proportion of the gas and kerosene water heaters produced by it to be sold and transported in interstate commerce from the plant of respondent in the State of Ohio to, into and through states of the United States other than the State of Ohio, all of the aforesaid constituting a continuous flow of commerce among the several states.

3. The employees in the production and maintenance departments at the plant of respondent constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9(b) of said Act.

4. On and before June 15, 1935, a majority of the employees of said unit had designated the M.E.S.A., a labor organization as defined in said National Labor Relations Act, as their representative for the purposes of collective bargaining with the respondent, such des-

Complaint

ignation having been made by membership therein. At all times since June 15, 1935, the M.E.S.A. has been the representative for collective bargaining of a majority of the employees in said unit and has by virtue of Section 9(a) of said Act, been the exclusive representative of all employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

5. While engaged at the plant of respondent as described above, the respondent, on June 15, 1935, entered into a collective agreement covering the rates of pay, hours of employment and other conditions of employment of the employees in the production and maintenance departments of the plant of respondent, for a term beginning, retroactively, June 1, 1935, and ending March 1, 1936, with a committee of four (4) of its employees described therein as representing the employees and members of the M.E.S.A.

6. While engaged at the plant of respondent as described above, the respondent, on July 22, 1935, employed seventy-nine (79) employees in the production and maintenance departments of the plant of respondent. While engaged at the plant of respondent as described above, the respondent, by its officers and agents, on July 23, 1935, August 21, 1935, on other dates during the months of July and August, 1935, and on September 3, 1935, did notify seventy-five (75) of said employees that during a temporary and indefinite period their services, and the services of each of them, would not be required.

7. While engaged at the plant of respondent as described above, the respondent, on September 3, 1935, entered into a collective agreement covering the rates of pay, hours of employment and other conditions of employment of the employees in the production and maintenance departments of the plant of respondent, for a term beginning September 3, 1935, and ending September 3, 1936, with District No. 24, International Association of Machinists (hereinafter called District No. 24).

8. On or about September 6, 1935, and at various times thereafter, the respondent did employ in its production and maintenance departments certain persons not theretofore employed by respondent in said departments, and did recall to employment certain of the

Complaint

seventy-five (75) employees who had been required to cease work as aforesaid, but on or about such date, and at all times thereafter, failed or refused to recall to employment forty-eight (48) of the seventy-five (75) employees who had been required to cease work as aforesaid, and has thereby discharged said employees, and each of them.

9. The respondent discharged and refuses to reinstate said employees, and each of them, for the reason that said employees joined and assisted a labor organization known as the Mechanics Educational Society of America, and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

10. By its discharge of said employees, and each of them, and its refusal to reinstate said employees, as above set forth, the respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of said Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (1) of said Act.

11. By its discharge of said employees, and each of them, and its refusal to reinstate said employees, as above set forth, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said employees, and each of them, and did discourage and is discouraging membership in the Mechanics Educational Society of America, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (3) of said Act.

12. By entering into a collective agreement covering rates of pay, hours of employment and other conditions of employment with District No. 24, as set forth in paragraph 7 of this complaint, at a time when a majority of the employees which said collective agreement purported to cover had designated the M.E.S.A. as their representative for the purposes of collective bargaining with the respondent, as set forth in paragraph 4 of this complaint, the respondent did engage in and is engaging in an unfair labor practice within the meaning of Section 8, subdivision (5) of said Act.

13. The aforesaid unfair labor practices occur in

Complaint

of experience in the aforesaid plant and others in the same and other industries, burden and obstruct such commerce and the free flow thereof and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof.

14. The aforesaid acts of respondent, as set forth in paragraphs 5-13, constitute unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1), (3) and (5) and Section 2, subdivisions (6) and (7) of said Act.

WHEREFORE, the National Labor Relations Board on the 12th day of November, 1935, issues its complaint against The Sands Manufacturing Company, respondent herein.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on the 22nd day of November, 1935, at ten o'clock in the forenoon, at the office of the National Labor Relations Board in the Eighth Region, 918 Guarantee Title Building, Cleveland, Ohio, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series 1, Article II, Section 22, on the allegations set forth in the above complaint, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Eighth Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the above complaint, within five (5) days of service of said complaint.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 1, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

IN WITNESS WHEREOF the National Labor Relations Board has caused this, its complaint and notice of hearing to be signed by the Regional Director for the Eighth Region on the 12th day of November, 1935.

(Signed) RALPH A. LIND,
*Regional Director for the
Eighth Region.*

AFFIDAVIT OF SERVICE

I hereby certify that, being a person over 18 years of age, I duly served a copy of the complaint and notice of hearing, and National Labor Relations Board Rules and Regulations, Series 1, all attached hereto, on Garry Sands, as Secretary of The Sands Manufacturing Company, on November 12, 1935.

NATHAN WITT, *Regional Attorney.*

Sworn to before me and subscribed in my presence this 12th day of November, 1935.

(SEAL)

ELIZABETH A. WELLS, *Notary Public.*

My commission expires February 20, 1938.

ANSWER OF THE SANDS MANUFACTURING COMPANY

1. Now comes The Sands Manufacturing Company, respondent herein, and objects to the jurisdiction of The National Labor Relations Board in this proceeding on the ground that the Act of Congress under which this proceeding is holden, Title 29, Chapter 7, otherwise known as the National Labor Relations Act, is unconstitutional and void in that it purports to authorize The National Labor Relations Board to assume jurisdiction over matters not subject to the laws of the United States of America, to-wit, the relationships existing between respondent and its employees who are engaged only in manufacturing operations and not in interstate commerce, and in that said Act contravenes the Fourth, Fifth, and Tenth Amendments to the Constitution of the United States.

Answer of the Sands Manufacturing Company

2. Without waiving its objection to the jurisdiction of The National Labor Relations Board and to the constitutionality of said Act of Congress, or intending to waive said objection, and at all times herein reserving its said objection, and further answering said complaint, the respondent admits that it is an Ohio corporation and alleges that it was organized in May, 1913. It denies that it has its principal office and place of business in Beachwood Village, County of Cuyahoga, Ohio, and alleges the true situs of its principal office and place of business to be 5407 Sweeney Avenue, Cleveland, Ohio, at which address its business has been carried on for approximately twenty-two (22) years, and at which place it admits that it is engaged in the manufacture, sale, and distribution of gas and kerosene water heaters.

3. Respondent admits that in the course and conduct of its business it purchases raw materials from sellers of said raw materials, some, but not all of whom have their offices and places of business in states other than the State of Ohio. Respondent denies that it transports in interstate commerce any of the raw materials which it purchases and further states that it merely gives its purchase orders for raw materials to the sellers thereof, or to their agents, and that the transportation of said raw materials to the plant of the respondent is a matter wholly within the control of the sellers of said raw materials. Respondent admits that it causes and has continuously caused a large proportion of its gas and kerosene water heaters to be sold and transported in interstate commerce from its plant in the State of Ohio into and through other states of the United States. Respondent alleges, however, that a large part of its raw materials are purchased in the State of Ohio and delivered to it without crossing state lines and that much of its products are sold by it, ~~to~~ and by carriers delivered to purchasers located in the State of Ohio and without crossing the state lines. Respondent denies that it participates in or engages in, or that its employees are engaged in any activities whatsoever which constitute a continuous flow of commerce among the several states.

4. Respondent admits, without intending thereby to waive its objection to the constitutionality of said Act, or to the applicability of said Act to respondent's manufacturing operations, that the employees in its production departments constitute a unit appropriate

Answer of the Sands Manufacturing Company

for the purpose of collective bargaining within the meaning of Section 9 (b) of The National Labor Relations Act, which section of said Act respondent alleges contravenes Article I, Section 1 of the Constitution of the United States. It denies that it would be appropriate to include its maintenance man in such a unit.

5. Respondent denies that on and before June 15, 1935 the majority of its employees had designated the Mechanics Educational Society of America, hereinafter referred to as the MESA, an unincorporated voluntary association, or labor organization, as their representative for the purpose of collective bargaining with the respondent, and respondent alleges the truth of the matter to be that thirty-two (32), a majority of its employees, on April 21, 1934, designated in writing a committee of three (3) of their number to be their representatives for the purpose of collective bargaining, and with such designation requested permission for the representatives of the MESA to be present in any dealings between the respondent and said committee, should occasion arise, which designation was accepted by respondent and which request was granted. Respondent therefore denies that at all times since June 15, 1935 the MESA has been the representative for collective bargaining of a majority of its employees, and alleges that on said date said representation was vested in the aforesaid committee of employees, or their successors by substitution and enlargement of the committee. Respondent alleges that said committee was on said date the only representatives of its employees for the purpose of collective bargaining, but respondent denies that said representation was by virtue of Section 9 (a) of said Act, which said Section 9 (a) respondent alleges contravenes the Fifth Amendment to the Constitution of the United States.

6. Respondent admits that on or about June 15, 1935, it entered into a collective agreement covering rates of pay, hours of employment and other conditions of employment of its employees in its production departments for a term beginning retroactively June 1, 1935, and ending March 1, 1936, and that said agreement was made with a committee of four (4) of its employees described therein as representing the employees and members of the MESA. Respondent denies that said agreement covered the maintenance department.

Answer of the Sands Manufacturing Company

7. Respondent denies that it had 79 employees in its production departments on July 22, 1935. It alleges the truth to be that on that date it had 61 employees in its production departments. Respondent denies that on July 23, 1935, August 21, 1935 and other dates during the month of July and August, 1935 and on September 3, 1935, it notified 75 of its employees that during a temporary and indefinite period their services, and the services of each of them, would not be required. Respondent alleges the truth to be that during the latter part of July, 1935, because of the lack of orders, it reduced its working force so that on August 3, 1935, it employed 31 men, two of whom were watchmen and two of whom were employed in the tool room; that for the lack of work on August 10th it discharged four other men, and that on August 17, 1935, because of lack of work it discharged three other men. On August 17th it had in its employ only 24 men, including the two watchmen and the two men who worked in the tool room. On August 21, 1935 respondent posted a notice to the effect that the plant would be shut down that night until further notice, the circumstances leading up to and the causes for the shut down being hereinafter more particularly related. Respondent further alleges that for the period of about three weeks prior to August 21, 1935, because of lack of work, its employees had worked only three days per week.

8. Respondent admits that on September 3, 1935 it entered into an agreement covering rates of pay, hours of employment and other conditions of employment of employees who should work in its production departments during the term beginning September 3, 1935 and ending September 3, 1936, with District No. 54 (instead of No. 24, as alleged in the complaint) of the International Association of Machinists. Respondent alleges that the International Association of Machinists is an affiliate of the American Federation of Labor. During the period from August 21st to September 3, 1935 it had in its employ, working on its new models for the year 1936, two employees who were members of said union and no others, except the watchmen, and that said employees, to respondent's knowledge, had never designated the aforesaid committee or the MESA as their representatives for the purpose of collective bargaining with the respondent. Respondent alleges, however, that said agreement was not a closed shop agreement and further alleges that said agreement was cancelled

Answer of the Sands Manufacturing Company

by mutual consent of the parties on or about September 10, 1935.

9. Respondent alleges that it reopened its plant on September 3, 1935. It admits that on or about September 6, 1935, and various times thereafter it employed in its production departments certain persons not theretofore employed by it in said departments, as well as certain other workmen who had theretofore been employed by it. Respondent admits for reasons hereinafter more particularly related that it did not recall to employment a large number of workmen previously employed by it. Respondent denies, however, that at the time of the reopening of its plant it refused employment to any of its other previous employees and respondent alleges that none of its other previous employees has applied to it for reemployment on said date or thereafter, except a very few, and under the circumstances hereinafter related.

10. Respondent denies that it discharged and/or refused to reinstate any employee for the reason that said employee joined or assisted the MESA, or engaged in certain activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

11. Respondent denies that it has interfered with, restrained, coerced, or is interfering with, restraining, or coercing its employees in the exercise of their rights, as set forth in Section 7 of the National Labor Relations Act. It further denies that it has engaged in, or is engaging in any unfair labor practice within the meaning of Section 8, Sub-Division 1 of said Act, or of any other of the sections and sub-divisions of said Act.

12. Respondent denies that it has discriminated or is discriminating in regard to the hire and tenure of employment of its employees or any of them, or that it discouraged, or is discouraging membership in the MESA, or that it has engaged in or is engaging in any unfair labor practice within the meaning of Section 8, Sub-Division 3 of said Act.

13. Respondent denies that it has engaged in or is engaging in any unfair labor practice within the meaning of Section 8, Sub-Division 5 of the National Labor Relations Act. Respondent alleges that it has at all times bargained collectively with the duly authorized representatives of those of its employees who were such

Answer of the Sands Manufacturing Company

employees prior to August 21, 1935, and that it has never refused to meet with the committee representing said employees. Since August 21, 1935, or some date shortly prior thereto, said committee requested no meetings with respondent. Respondent further alleges that it has bargained collectively, and stands ready to bargain collectively with its present employees. It has never refused to bargain collectively with them through their duly authorized representatives.

14. Respondent denies that any of its acts in reference to or in connection with its employees has occurred in commerce among the several states; that they burden or obstruct commerce among the several states, or the free flow thereof, or that they have led or tend to lead to labor disputes, which burden or obstruct such commerce and the free flow thereof. Respondent alleges that at all times it has filled its customers' orders promptly and that it has purchased and received delivery of raw materials promptly and in a normal manner.

15. Respondent denies that in its dealings with its employees it has engaged in any unfair labor practice affecting commerce within the meaning of Section 2, Sub-Divisions 6 and 7 of the National Labor Relations Act, and further alleges that if by the definition of "affecting commerce," said National Labor Relations Act is intended to apply to relationships between respondent and its employees, all of whom have been hired in and have performed their services, consisting of purely manufacturing operations within the State of Ohio, then said Sub-Division of said Act, and the Act of itself, is unconstitutional and void, as aforesaid.

16. Further answering, this respondent denies each and every allegation and averment in said complaint contained, not herein specifically admitted to be true.

17. Further answering, and by way of new matter constituting an explanation of some of its previous denials and additional defenses, respondent alleges that it buys lumber, copper, tanks, gas valves, iron castings, and other finished, semi-finished or raw materials, for the purpose of manufacturing, processing, or assembling them into its finished products. That all of said manufacturing, processing and assembling is done at respondent's plant in Cleveland, Ohio. That all of respondent's products are packed and crated for ship-

Answer of the Sands Manufacturing Company

ment in Cleveland, Ohio, and that all of its productive employees are and have been residents of the State of Ohio and of the city of Cleveland and vicinity. Respondent further alleges that its plant is divided into about nine (9) departments, consisting of the Machine Shop, Tool Room, Instantaneous Department, Coil Department, Storage Department, Sheet Metal Department, Stock Room, Tank Heater Assembly Department, and Shipping Department. In these departments the finished, semi-finished and raw materials purchased by the respondent from others, are machined, processed and assembled, and boxed and crated for shipment.

18. Respondent further alleges that it has always afforded to its employees the right to belong to a labor organization or not, as they saw fit.

19. Respondent further alleges that on April 21, 1934, three of the respondent's employees, to-wit, Harry Potter, Clarence Dusek and Lada Jindra, presented respondent with a petition signed by themselves and 29 others of respondent's employees, purporting to authorize the said three persons to act as a committee for the purpose of bargaining collectively with the respondent. Said petition further requested that the committee so authorized, be privileged to be accompanied by representatives of the MESA when occasion required it. Thereafter negotiations were had between respondent and said committee, as a result of which on May 2, 1934, the committee tendered to the respondent a form of agreement intended to govern wages, hours and working conditions in the respondent's plant for a period of sixty (60) days from the date thereof, excepting the porter, shipping clerk and maintenance man. On May 7, 1934, an amendment to said form of agreement having been agreed to between respondent and said committee, said agreement, as amended, was accepted by the respondent and the committee. By mutual consent of respondent and said employees the latter continued to work under said agreement until on or about May 13, 1935, when a committee of said employees made additional demands upon respondent.

20. In November, 1934, respondent acquired a contract for the manufacture of considerable merchandise for the United States Government, which, because of the time specified for delivery of said goods, necessitated the hiring of additional help and it was a matter of mutual understanding between the aforesaid com-

Answer of the Sands Manufacturing Company

mittee and the respondent that new and additional men should be hired for the purpose of manufacturing said order, said additional men to be discharged when said order had been completely manufactured. Many of these new employees, respondent is informed, became members of the MESA during this employment. The manufacture of the goods called for by said order was completed about December 4, 1934, and the new men were discharged and the factory went back to normal. No dispute was raised about the discharge of these new men. However, having been once employed by the respondent, the respondent was accustomed to recall some of them to work from time to time, if they were not elsewhere employed, when the state of its business required additional employees. Within a short space of time after their discharge, many of these men were able to secure permanent employment elsewhere and it became necessary for the respondent, if it were to hire additional employees in rush periods, to hire men who had never worked for it before.

21. Respondent further alleges that, as aforesaid, its employees continued to work on and after May 7, 1934 under the agreement of that date until on or about May 13, 1935 when a committee of said employees made additional demands upon respondent. Following the presentation of these demands, negotiations were had between the committee and respondent's officers. However, the negotiations were unsuccessful and the committee called a strike of respondent's employees on or about May 21, 1935. During the strike, negotiations continued between respondent and said committee. Shortly prior to June 3, 1935, the committee and respondent's officers orally agreed upon the terms under which the strike should be settled. It was agreed that pending the drafting of a written agreement, respondent's factory was to be opened on June 3rd and that all employees of May 21, 1935 (58 employees) should return to work, with the exception of five (5) men, who, it was agreed, should not be returned to work because of inefficiency. The employees did return to work on June 3, 1935, with the exception of the said five (5) men. In the meantime, and before the written agreement was drafted and signed, which was to have been done on June 4th, but which was delayed by said committee, the employees went on strike again on June 6th, insisting upon the reinstatement of the five (5) men. Negotiations continued. On or about June 15, 1935, an agree-

Answer of the Sands Manufacturing Company

ment, drawn by said committee, was signed by respondent and the committee, which committee by this time had a slightly different personnel. On or about said date, all of the employees returned to work, without discrimination. Respondent further alleges that due to the accumulation of orders during the period of the strike, respondent felt it necessary to hire approximately thirty (30) additional employees, and it did so. Some of these new employees had worked for the respondent previously on the government job and many of them had not. Nineteen (19) of this latter class, respondent is informed, saw fit to affiliate themselves with the International Association of Machinists, an American Federation of Labor Union. There was no prohibition against their belonging to this latter union in the agreement of June 15, 1935. These men worked side by side with the members of the MESA and other employees without dispute for some weeks at the wages provided in the agreement. By the latter part of July practically all of the respondent's orders had been filled and it became necessary for respondent to reduce its working force. Indeed, reduction was urged by the aforesaid committee. On or about August 1st respondent discharged practically all of its employees except thirty-one (31). Respondent's plant then went on a three day per week basis. Additional discharges were made, until on August 21, 1935 there were only 24 men, including two watchmen, who worked in the plant.

22. Respondent further alleges that among the provisions of the agreement of June 15, 1935, were the following:

"(5) That when employees were laid off, seniority rights shall rule, and by departments.

"(6) That when one department is shut down, men from this department will not be transferred or work in other departments until all old men only within that department, who were laid off, have been called back."

"(20) In case of a misunderstanding between the management and the employees, the committee shall allow the management forty-eight (48) hours to settle the dispute, and if then unsuccessful the committee shall act as they see fit."

23. During the period from shortly prior to August 1st to August 21st, the respondent had held a number

Answer of the Sands Manufacturing Company

of meetings, probably four or five, with the employees' committee relative to hiring additional men for its machine shop, in order to make up stock so that when orders began to accumulate, other departments should not be held back in their work. However, the employees' committee insisted that if respondent increased the working force in the machine shop, that the increase be made by rehiring employees who had worked in other departments and had been temporarily laid off, or who were then working part time in other departments, and further insisted that the men from these departments be paid at the rates at which they were usually paid in their own departments, regardless of the work they might perform in the machine shop. Respondent avers that the intent of said contract of June 15, 1935, was that when seniority was involved, it would be applied by departments and that seniority in one department gave no right of transfer to or new employment in another department. Respondent's officers were also of the opinion that the men who had previously worked in the machine shop, but who had been discharged for lack of work, would show greater efficiency than other employees who had been employed in other departments, but who had had no machine shop experience. However, while the negotiations were continuing, respondent attempted to enlarge its machine shop force by making some transfers from other departments, but found the quality of the work of the men transferred to be unsatisfactory. Thereafter respondent's officers informed the committee that it was absolutely imperative that additional men be hired for the machine shop in accordance with the contract and whose workmanship would be reasonably satisfactory. However, the committee was adamant, and finally gave respondent's officers the choice of increasing the working force in the machine shop by taking men from other departments or closing its plant.

24. The employees' committee refused to permit respondent to increase its machine shop crew, chiefly because the committee anticipated that the respondent might reemploy some of the nineteen (19) employees who had therefore worked in the machine shop and had done their work efficiently, and who were members of the machinists' union affiliated with the American Federation of Labor. It was the apparent purpose of the shop committee to prevent members of any union other than the MESA from working in respondent's shop.

Answer of the Sands Manufacturing Company

This purpose was violative of Section 11 of the agreement of June 15, 1935, which provided "that all new employees in the future shall have the right to join any labor organization any time they so desire." Respondent considered the action of the shop committee in giving it the alternative of either acceding to their demands or closing its shop to be violative of its contract and a breach thereof. Nothing could be done by further negotiations and the agreement provided no way out of the difficulty. Furthermore, due to the activities of the committee and their constituents, plant discipline had almost ceased to be. Plant foremen were members of the MESA (with but two exceptions) and they had permitted inefficiency, insubordination, and a reckless disregard of the employees' fair and reasonable obligations to respondent to go unchallenged. Said foremen had also discriminated in favor of MESA members and against non-members of that organization. Members of the MESA had attempted, by threatened discrimination and otherwise, to force all employees to join that organization. They had also sought to compel the discharge of all non-members of that organization. The committee or the MESA had issued instructions to their constituents not to speak to two of respondent's foremen who at first belonged to no organization and who later affiliated with the A. F. of L. Said instructions were carried out by the employees and as a result, many of said foremen's instructions, given to employees in the ordinary course of business, were ignored. It was common talk in respondent's plant that none of the constituents of the committee could be discharged for any cause. From a loss of \$20,930.58 in 1933, respondent's loss in 1934 jumped to \$40,869.35, with no better prospects in 1935. Wherefore respondent, considering the agreement of June 15, 1935, as breached by its employees as aforesaid, adopted the alternative suggested by the employees' committee, posted a notice on August 21, 1935 that the shop would close indefinitely that evening, and discharged and paid off in full all of its employees, except a watchman or two and two tool makers, whom it kept employed for the purpose of working on 1936 models. The employees' committee made no request whatever for a meeting on that date nor has it made any such request since that time. The plant remained closed until September 3, 1935. During the interim the respondent continued to fill from stock such orders as it received and on a number of occasions it called in an employee or two for the purpose

Answer of the Sands Manufacturing Company

of doing a little work of a special nature, after the performance of which the employee was immediately paid off in full.

25. Respondent further alleges that on August 26 or 27, 1935, it approached the officials of the International Association of Machinists, District No. 54, affiliated with the A. F. of L., respecting the employment of its members, or a working agreement with it, and feeling sure of their cooperation, it opened its plant on September 3, 1935, operating at first only the machine shop. Because the employees' committee had adamantly refused to permit the operation of the machine shop alone, unless it were manned by employees from other departments, the respondent did not ask any of said employees to work in the machine shop. It did, however, call upon former employees who had worked in the machine shop to come to work. Approximately six of the 19, members of the A. F. of L., reported for work. Other workmen were added from time to time, until at the present time respondent's plant is fully manned with a normal working force. Respondent further alleges that the only contact there has been between it and the complainant, the MESA, was on the morning of September 3, 1935, at about 11:00 o'clock, when one Harry Potter, the state chairman of the MESA, telephoned one of the respondent's officers, protested against the employing of new employees for the machine shop, charged that the respondent's act in so doing was a violation of the National Labor Relations Act, and stated that he was going to cause the respondent's plant to be picketed. Within two days the plant was picketed by former employees and other members of the MESA and sympathizers, who, by a show of force and some violence, attempted to prevent respondent from operating its plant. Said picketing continued about thirty (30) days. None of respondent's former employees, who were working August 21, 1935, have ever requested reemployment, with the exception of two or three, who came in the back door, about thirty (30) days after the plant was reopened, and after picketing had just about ceased, and except about ten other employees, who later applied for reemployment, but whose places theretofore had been filled.

26. Respondent further alleges that the immediate cause of the discharge of those of its former employees, in whose behalf the present complaint is filed, was:

Answer of the Sands Manufacturing Company

(a) The arbitrary action of their committee, with whom respondent's officers had dealt for almost a year and a half, in denying to the respondent the right under the contract to build up its machine shop force, without transferring to it men from other departments.

(b) The arbitrary action of their committee in attempting to compel the alteration of the agreement of June 15, 1935, so that it would be changed into a closed shop agreement—this by preventing the hiring of workmen who were members of another union, namely, the International Association of Machinists Union, an affiliate of the A. F. of L., and which action was in effect a breach of said contract.

(c) The arbitrary action of their committee in issuing an ultimatum to respondent to either accede to said wrongful demand of the committee or shut down its plant, which was also a breach of the agreement of June 15, 1935, and which was a threat that the employees, parties thereto, would refuse to render services during the term of said agreement in accordance with the provisions thereof, unless the respondent acceded to the demands of their committee.

(d) The situation prevailing in its plant as set forth in paragraph 24 hereof.

27. Respondent alleges that the condition existing August 21, 1935 to September 3, 1935 was brought about by the employees themselves, and that as a means of extricating itself from a situation under which it could not continue any operations and afford employment to those of its employees and former employees for whom it then had employment, respondent employed what seemed to it then and now to be a reasonable, peaceful and lawful means.

WHEREFORE, respondent prays that the complaint against it be dismissed.

STANLEY & SMOYER,
Attorneys for Respondent,
970 Union Trust Building,
Tel. No. Pros. 4180.

Designation of Trial Examiner

STATE OF OHIO, }
COUNTY OF CUYAHOGA, }ss:

GARRY SANDS, being first duly sworn, deposes and says that he is the Secretary-Treasurer and General Manager of The Sands Manufacturing Company; that it is a corporation; that he is authorized to make this verification; that he has read the foregoing answer and that the allegations, averments and denials therein contained are true as he verily believes.

GARRY SANDS.

Sworn to before me and subscribed in my presence this 20th day of November, 1935.

(SEAL.)

(Signed) EUGENE B. SCHWARTZ,
Notary Public.

DESIGNATION OF TRIAL EXAMINER

I, Ralph A. Lind, Regional Director for the 8th Region, National Labor Relations Board, pursuant to National Labor Relations Board Rules and Regulations, Series 1, Article II, Section 22, do hereby designate Saul Danaceau as Trial Examiner herein.

RALPH A. LIND,
*Regional Director for the 8th
Region.*

DECISION**STATEMENT OF CASE**

On October 14, 1935, the Mechanics Educational Society of America, hereinafter called the MESA, filed with the Regional Director for the Eighth Region a charge that the Sands Manufacturing Company, Cleveland, Ohio, hereinafter called the respondent, had engaged in and was engaging in unfair labor practices within the meaning of the National Labor Relations Act, approved July 5, 1935, hereinafter called the Act. On November 12, 1935, the Board issued a complaint signed by the Regional Director for the Eighth Region alleging that the respondent had committed unfair labor practices within the meaning of Section 8, subdivisions (1), (3) and (5) and Section 2, subdivisions (6) and (7) of the Act. The complaint alleges in substance:

1. On or before June 15, 1935, a majority of the employees in the production and maintenance departments of the plant of the respondent had designated the MESA as their collective bargaining representative, and that at all times since the MESA had been the exclusive representative of the employees in such unit for the purposes of collective bargaining.

2. On June 15, 1935, an agreement for a period to March 1, 1936 was entered into between the respondent and the MESA concerning rates of pay, hours of work and other conditions of employment.

3. On July 23, 1935, August 21, 1935 and on other dates during the months of July and August, 1935 the respondent notified 75 of its production and maintenance employees that their services would not be required during a temporary and indefinite period.

4. On September 3, 1935 the respondent entered into a collective agreement covering rates of pay, hours of employment and other conditions of employment of its production and maintenance employees with the International Association of Machinists for a term beginning September 3, 1935 and ending September 3, 1936.

5. On or about September 6, 1935, and at various times thereafter, the respondent hired in its production and maintenance departments certain persons not theretofore employed by the respondent, and recalled to employment certain of the 75 employees laid off temporarily, but refused to recall to employment 48

Decision

of the 75 for the reason that they were members of the MESA and had engaged in concerted activities for the purpose of collective bargaining.

6. The acts of the respondent constitute unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1), (3) and (5) and Section 2, subdivisions (6) and (7) of the Act.

The complaint and the accompanying notice of hearing were duly served upon the respondent and upon the MESA. Thereafter the respondent filed its answer to the complaint alleging, *inter alia*, as follows:

1. The National Labor Relations Act is unconstitutional because it violates the 4th, 5th and 10th Amendments to the Constitution of the United States.

2. It is an Ohio corporation, organized in 1913, has its principal office and place of business in the County of Cuyahoga and State of Ohio, and is engaged in the manufacture, sale and distribution of gas and kerosene water heaters. It obtains its raw materials partly from without and partly from within the State of Ohio and its products are shipped to destinations within and without the State of Ohio.

3. The MESA was not the representative for purposes of collective bargaining designated by a majority of the production and maintenance employees but only had the right to accompany the committee chosen by the employees for that purpose in their dealings with the respondent.

4. The employees discharged by the respondent during July and August were dismissed because of lack of work.

5. The shutdown of the plant on August 21, 1935 occurred because the respondent considered the agreement of June 15, 1935 had been violated by the employees' committee.

6. The agreement of September 3, 1935, entered into between the respondent and the International Association of Machinists was not a closed shop agreement and was cancelled by mutual consent of the parties on or about September 10, 1935.

7. Upon the reopening of the plant on or about September 3, 1935, the respondent did not recall to employment a large number of workmen previously em-

Decision

ployed by it, but with the exception of a few, none of its previous employees had applied to it for reemployment.

8. The respondent did not discharge or refuse to reinstate any employees because they belonged to the MESA and had engaged in concerted activities for the purpose of collective bargaining.

9. The respondent did not commit unfair labor practices within the meaning of Section 8, subdivisions (1), (2) and (3) of the Act.

A hearing commencing November 25, 1935 and continuing to and including November 30, 1935, was held in Cleveland, Ohio, before Saul S. Danaceau, duly designated by the Board as Trial Examiner. Full opportunity to be heard, to cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties.

On December 26, 1935 the Trial Examiner duly filed with the Regional Director an Intermediate Report in accordance with Article II, Section 30 of National Labor Relations Board Rules and Regulations—Series 1. The Trial Examiner found that the respondent had committed unfair labor practices within the meaning of Section 8, subdivisions (1) and (3) of the Act, and recommended that the respondent cease and desist from interfering and coercing its employees in the rights guaranteed by the Act, and reinstate to their former positions the employees discharged, but without back pay. The motions of the respondent to dismiss the complaint made and renewed during the hearing were overruled by the Trial Examiner.

Exceptions to the Intermediate Report were filed by both parties in accordance with Article II, Section 32 of National Labor Relations Board Rules and Regulations—Series 1. Thereafter oral argument was held before the Board at which the respondent participated by its counsel, who also filed a brief.

Upon the entire record in the case, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Board makes the following:

Decision

FINDINGS OF FACT

I. THE RESPONDENT AND ITS BUSINESS

The respondent is a corporation organized in 1913 under the laws of the State of Ohio. It has its principal office and place of business in the City of Cleveland, County of Cuyahoga, State of Ohio. It is engaged in the manufacture, sale and distribution of gas and kerosene water heaters.

The respondent obtains raw materials in the form of brass, castings, sheet iron, steel tanks, tubing, packing material, and miscellaneous other material from Ohio, Michigan, Connecticut, Massachusetts, New York, Illinois, Wisconsin, West Virginia, Virginia and other states. During the period from January 1, 1935 to October 1, 1935, its purchases of raw materials totalled \$181,828.51, of which the purchases from within the State of Ohio totalled \$106,616.31.

The respondent ships and transports tank heaters, storage heaters, instantaneous heaters and valves and other parts produced and sold by it to every state and the District of Columbia. During the period from January 1, 1935 to October 31, 1935, the value of its shipments totalled \$318,117.08, of which shipments within Ohio were \$34,091.17 and those outside of Ohio were \$284,025.91.

The shipments to and from the respondent are by common carrier. Its articles are shipped on consignment to various warehouses, not owned or operated by the respondent, throughout the United States, where they are stored pending the filling of individual orders. The respondent has representatives in various parts of the United States, who, with the exception of the one in New Jersey, are paid by commission.

The advertising of the respondent is on a nationwide scale. During the period January 1, 1935 to October 31, 1935 its disbursements for advertising totalled \$8,750.48.

The operations of the respondent constitute a continuous flow of trade, traffic and commerce among the several States.

II. THE RELATIONS BETWEEN THE RESPONDENT AND ITS EMPLOYEES—THE BACKGROUND OF THE LABOR DISPUTE— APRIL, 1934 TO JUNE 15, 1935

Early in 1934 the production and maintenance employees of the respondent became members of the MESA, an independent labor organization with head-

Decision

quarters in Detroit, Michigan. All of the employees of the respondent in the production and maintenance departments, exclusive of supervisory and clerical employees, were eligible for membership in the MESA. In April, 1934, in a letter to the respondent, 32 of the production and maintenance employees who had joined the MESA, designated a committee of three of their number, Harry Potter, Clarence Dusek and Lada Jindra, to be their representatives for the purpose of collective bargaining, and requested that representatives of the MESA be present at the dealings between the respondent and the committee. These 32 employees constituted practically all of the employees in the plant at that time.

We find that the production and maintenance employees of the respondent constitute a unit appropriate for the purposes of collective bargaining.

After negotiations between the committee and the respondent, an agreement was made on or about May 2, 1934 providing *inter alia*, for an increase in wages. The agreement was to run for 60 days, but by mutual consent the parties continued to operate thereunder until some time in May, 1935.

In the fall of 1934, while the respondent was endeavoring to obtain a contract with the United States Government for the manufacture of a large amount of merchandise, it obtained a promise from the employees that there would be no labor trouble in the plant to interfere with the filling of the order. About 35 new and additional men were hired to help do the work on the Government order. After the completion of the Government order in December, 1934, these new and additional men were discharged. While employed by the respondent all but 3 of the additional men became members of the MESA.

In the spring of 1934 Harry Potter, who had become state chairman of the MESA, left the employ of the respondent. Tony Moraco, one of the employees of the respondent, supplanted Potter as a member of the shop committee. Potter, however, continued to participate in the negotiations between the respondent and the shop committee as a representative of the MESA.

During the middle of May, 1935, negotiations took place between the respondent and the shop committee concerning a new agreement. The main demand of the employees was for an increase in wages. The negotiations were unsuccessful and a strike was called on May 21, 1935. Negotiations continued during the strike,

Decision

with the participation of Potter and a United States Department of Labor Conciliator. An agreement was finally arrived at on or about June 1, 1935 and pending the drafting of a written contract the strikers returned to work on June 3, 1935. A dispute arose as to 7 men whom the respondent refused to reinstate on the ground of insufficiency, and on June 6 the men struck again. The respondent's position was that the shop committee agreed to the discharge of the 7 men.

Further negotiations continued which culminated in a written agreement on June 15, 1935, between the respondent and the shop committee on behalf of the MESA. This agreement called for an increase in wages, and provided that no employees be discharged without a hearing before the management and the shop committee on specific charges. On June 17, 1935 all of the employees, including the 7 whom the respondent had refused to reinstate, returned to work.

It is clear from the evidence that on June 15, 1935, and at all times thereafter, the MESA was the representative of the majority of the respondent's production and maintenance employees.

III. THE LABOR DISPUTE

In order to complete the orders which had accumulated during the strike, the respondent, after the plant reopened on June 17, 1935, hired approximately 30 additional men, some of whom had worked for the respondent while the Government order was being filled, and some of whom were new.

By the middle of July practically all of the accumulated orders had been filled and respondent proceeded to reduce its working force. About July 15, 1935, after conferences between the management and the employees, all the men in the tank heater department with the exception of the foreman were laid off.

In the agreement of June 15, 1935, the 31 men who were employees of the respondent prior to the Government order of 1934 were designated as "old men," and those employed while the Government order was being filled were "new men." About July 30, 1935 a notice was posted on the time clock in the plant of the respondent that the new men would be laid off on July 30 and the old men would be laid off on August 2, 1935. After the layoff of the new men another notice was posted to the effect that the plant would be operated with the old men on a schedule of three days a week.

Decision

Thus, by the end of July and the beginning of August, some departments were being operated on a part time basis and others had been practically shut down. At or about this time, the respondent wished to increase the working force in the machine shop, the key department, while at the same time shutting down the other departments. Repeated conferences were held between the management and the shop committee in reference to this matter. The positions of the respondent and the employees were diametrically opposed. The management contended that new men, experienced in machine shop work, be employed in preference to the old men. The shop committee contended that there was sufficient stock in the machine shop, and that in any event, under the agreement of June 15, 1935, the respondent could not hire any new men for the machine shop as long as old men were still laid off. The management claimed that the shop committee was insisting upon a violation of Article 5 of the agreement. The pertinent articles of that agreement are:

5. That when employees are laid off, seniority rights shall rule, and by departments.

6. That when one department is shut down, men from this department will not be transferred or work in other departments until all old men only within that department, who were laid off, have been called back.

7. That all new employees be laid off before any old employees, in order to guarantee if possible at least one week's full time before the working week is reduced to three days.

For many years both before and after the organization of the employees, it had been the practice at the plant of the respondent to transfer men from one department to another. This practice prevailed even after June 15, 1935. In this connection it should be noted that when men were transferred from one department to another they continued to receive their normal wages irrespective of the work done. Wages of employees of respondent depended on length of service.

The discussions between the management and the shop committee continued until about August 19, 1935, when the shop committee was given the alternative between consenting to an increase in working force of the machine shop with new men and a temporary shut-down in the other departments, on the one hand, and a

Decision

temporary complete shutdown of the plant on the other. The shop committee was asked to consult the men and advise the management which of these alternatives they preferred. On August 21, 1935, another meeting took place, at which time the committee informed the management that the men considered a temporary complete shutdown of the plant as the preferable course. The same day the management placed a notice on the time clock reading: "The factory will shut down Wednesday night, August 31st, until further notice"—and the plant was closed.

On or about August 26th or 27th, Garry Sands, secretary-treasurer of the respondent during all of the occurrences in this case, and Hilliard J. Sands, superintendent, went to the office of the business agent of the International Association of Machinists, and negotiated an agreement between the respondent and the International Association of Machinists, District No. 54, which was executed on or about August 31st and became effective September 3rd. Garry Sands testified that he was advised to take this step by a friend who had a similar agreement with that union. The respondent opened its plant on September 3rd. In order to do so it sent telegrams to each of its workers, almost all new men, who were members of the International Association of Machinists, and in addition called upon the Cuyahoga County relief organization to supply additional workers. The International Association of Machinists also supplied the respondent with new help.

With the exception of four men, none of the old men, members of the MESA, was called back to work by the respondent. Two of the four, Stanley Linsky and Frank Pansky, after being sent for by the respondent on August 30th, were offered employment on the basis of reduced hourly wages with increased rates at later dates and with guaranteed steady work. They were told to think it over and to come back September 4th. Linsky testified that when he came back September 5th, Garry Sands repeated his offer concerning the wages but told him that if he wanted to work he would have to join the International Association of Machinists and would be given protection against harassment by MESA men. Garry Sands denied that he made joining the International Association of Machinists a prerequisite to getting work but admitted the rest of the conversation.

Pansky testified that when he came back September 4th, the wage offer was repeated. He also testified that

Decision

he was told by Garry Sands that he would have to join the International Association of Machinists if he wanted to get the job, and that the rest of the old men would not be recalled to work because their hourly rates were too high. Garry Sands expressed satisfaction with the agreement with the International Association of Machinists, gave Pansky a blank for application to the International Association of Machinists to sign, and said that if Pansky worked for the rest of the afternoon he would have enough for initiation fees. He also told Pansky that the agreement of June 15th was invalid because Potter had not signed it. Pansky filled out the application blank but did not work that afternoon. Garry Sands' version of the conversation is substantially the same, except that he denied having said that Pansky would have to join the International Association of Machinists in order to get the job, and that he did not want the rest of the old men back. He further testified that he procured the application blank for Pansky when the latter expressed a desire to join the International Association of Machinists, having heard from him, Sands, that the members of the International Association of Machinists who were working were getting protection. Sands also testified that his reference to the invalidity of the agreement of June 15th was on the ground that the old men had broken the agreement. However, Hilliard J. Sands, who was present at these conversations, admitted in his testimony that Garry Sands told Pansky, Linsky, Dolish and Ochs, the four men who were called back, that the offer of reemployment was being made only to them and not to the rest of the old men.

None of the four, however, went back to work. A few of the old men asked respondent for work after the plant reopened, but were told that their places were taken.

When the MESA men discovered that the plant of the respondent was in operation, they met with Harry Potter who communicated by telephone with Garry Sands in behalf of the shop committee. Potter protested against the lockout of the old men. He testified that in the course of this telephone conversation, he asked for a meeting with the management, but Garry Sands refused and claimed that the agreement of June 15th was invalid because Potter had not signed it. Garry Sands admitted that Potter had called him, but denied that Potter had asked for a meeting. He testified that when Potter threatened to have the plant

Decision

picketed and to file charges under the Act, he replied that the old men broke the agreement of June 15th. Pansky testified that he heard Potter ask Garry Sands to meet with him or with the committee. The MESA men then immediately started to picket the plant and continued their picketing during the month of September. The plant continued in operation during the picketing.

On or about September 10, 1935, at the request of the respondent, the agreement between it and the International Association of Machinists, District No. 54, was cancelled by mutual consent of the contracting parties. Garry Sands testified that he decided to have the agreement cancelled because he was apprehensive of the consequences which might follow from the filing of a charge under the Act. However, the present employees continue to work under the same terms as in the written agreement, at a wage scale considerably lower than that under which the old men had worked.

IV. THE UNFAIR LABOR PRACTICES

To the complaint that the respondent has committed unfair labor practices within the meaning of Section 8, subdivisions (1), (3) and (5), the following contentions are made in behalf of the respondent, aside from the arguments on constitutional grounds:

1. The old employees wilfully violated the agreement of June 15, 1935 in respect to shifting employees from one department to another.

2. Even if there was an honest difference of opinion on the construction of that agreement, the respondent and the old employees reached an impasse in their negotiations. The respondent was therefore not obligated to continue negotiations and was further justified in replacing the old employees with new ones.

In the course of the dispute which arose after June 17th between the respondent and the shop committee concerning building up the force of the machine shop, the committee took the position that it would not be a violation of the agreement of June 15th to transfer old men who had been laid off to the machine shop, if they could do the work, before new men were hired.

It is true that the phrase "and by departments" was added to Article 5 when it was originally submitted by the men in the following form: "That when employees are laid off, seniority rights shall rule." However, this

Decision

was not integrated with Article 7 which provided: "That *all* new employees be laid off before *any* old employees, in order to guarantee if possible at least one week's full time before the working week is reduced to three days." The operation of Article 7 is not limited to departments. Yet it deals with the same subject as Article 5. It is clear that the shop committee was not unreasonable in contending that the preference to old men over new men applied to the whole plant and not only to departments. Besides, the problem was complicated by the fact that the dispute over building up the machine shop involved seniority in hiring as well as in laying off, while the two articles involved state the rule of seniority only in laying off. The confusion on the point is abundantly evident in the testimony of the old men, so much so, that counsel for the respondent, by resorting to a mixture of hypothetical and factual questions in his cross-examination of them, confused rather than clarified the record.

Because of its importance in explaining the respondent's conduct during and following the closing of the plant on August 21st, the reason for the opposition of the respondent to the transfer of old men from other departments to the machine shop must be explored. Garry Sands claimed that the opposition was based on inefficiency of the transfer system. However, in view of all the circumstances the claim is not convincing. The shop of the respondent appears to be highly mechanized and the individual operations correspondingly simplified. A complete set of new men were broken in for the Government order in 1934 without any apparent difficulty. No efficiency records were introduced, and, apparently none were kept. Employees were transferred from one department to another over a period of years both before and after the organization of the MESA, and most of the old men had worked in the machine shop at some time or other.

No evidence of persuasive materiality was introduced by the respondent to substantiate the claim that the old men were unsatisfactory when transferred from one department to another. In fact, the respondent failed to put in evidence showing that any particular old men were inefficient when transferred.

In this connection, the case of Jack Normian may be cited. He was one of the 7 whom the respondent refused to reinstate on June 3rd. He was later discharged on the ground of inefficiency. When all the facts were put before the shop committee it consented to the dis-

Decision

charge. It is true that Norman's case did not arise because of a transfer. However, the evidence tends to show that the shop committee would have been reasonable if the respondent had in good faith attempted to show in specific cases that the transferring of men resulted in inefficiency. There is no evidence to show that the respondent had ever attempted to do so.

Other evidence bearing on the subject of efficiency would show the old men to better advantage than the new men. Charles Rudd, the foreman of the tank heater department, testified that in the spring of 1935 with 8 old men in the department, 850 to 909 heaters were the daily average, while in July, 1935, with only 2 old men, and with the remainder new men, the highest number per day was 790. Finally, no consideration of efficiency and experience deterred the respondent from calling on the Cuyahoga County relief organization for a supply of workers when the plant was reopened in September.

Rates of pay in the respondent's plant depended on length of service and not on the nature of the work. Thus, when old men were transferred to any department, they continued to receive higher rates than younger men in the same department. We are inclined to believe that the impelling motive for the opposition of the respondent to transferring the old men to the machine shop instead of hiring new men lay in this fact. In fact, Garry Sands testified that after the shutdown of August 21st, he complained to Albert Farrell, one of the old men, about the unfairness of transferring men receiving high wages to do work which could be done by men receiving much less.

Although the Board is of the view that an honest difference of opinion existed on the construction of the June 15th agreement, the case against the respondent is not in any way prejudiced if the stand of the shop committee in resisting the demand of the respondent to build up the machine shop with new men instead of with old men is considered a violation of the agreement. After the shutdown of August 21, 1935 the old MESA men continued to be employees of the respondent irrespective of the cause of the shutdown. The National Labor Relations Act makes no distinction based on the issues involved in labor disputes. An "employee" under Section 2, subdivision (3) of the Act includes "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice." Moreover, after the shutdown on August 21st, inas-

Decision

much as the MESA still represented a majority of the employees in an appropriate unit, it was, by virtue of Section 9(a) of the Act, the exclusive representative of the employees for purposes of collective bargaining. The respondent, therefore, could not alter the status quo without bargaining with the MESA. Instead of bargaining with the MESA, however, the respondent entered into an agreement with a union which did not represent its employees, and thereupon discharged the members of the MESA.

The contention the respondent makes, however, is that its negotiations with the committee had reached an impasse at the time of the shutdown and further negotiations would have been futile unless the respondent were prepared to accede to the committee's demands.

It is hardly necessary to state that from the duty of the employer to bargain collectively with his employees there does not flow any duty on the part of the employer to accede to demands of the employees. However, before the obligation to bargain collectively is fulfilled, a forthright, candid effort must be made by the employer to reach a settlement of the dispute with his employees. Every avenue and possibility of negotiation must be exhausted before it should be admitted that an irreconcilable difference creating an impasse has been reached. Of course no general rule as to the process of collective bargaining can be made to apply to all cases. The process required varies with the circumstances in each case. But the effort at collective bargaining must be real and not merely apparent. This could hardly be said of the conduct of the respondent in this case. The respondent was not justified in not negotiating with the committee after the shutdown of the plant. The closing of the plant on August 21st was only "until further notice," as the notice posted on the time clock by the respondent explicitly stated. Nothing was said by Garry Sands or anybody else in behalf of the respondent to the committee which would have indicated that the closing of the shop meant that the old employees would not be recalled. It is inconceivable that the committee would have accepted this, especially since the men had been so successful when they struck a few months earlier.

Furthermore, a new issue arose after the shutdown which completely overshadowed the issue of building up the machine shop. The respondent wished to reduce the wage rates of its employees with guaranteed steady

Decision

work. Why did not the respondent notify the committee of this new offer? There was no reason to believe that the committee would not have considered it. As a matter of fact, the respondent thought well enough of the proposition to offer it to four of its old men.

A meeting with the respondent was asked for by Potter in behalf of the committee on September 4th, but Garry Sands refused. Indeed, there was no obligation on the employees to ask for a meeting. Since the plant was closed until further notice and the respondent changed its position on the wage rates, the duty devolved upon the respondent to advise the committee of the new offer. Instead, the respondent surreptitiously entered into negotiations to replace the MESA men with a new set of men at lower wages, some of them belonging, (in the opinion of its secretary-treasurer) to a more conservative union. This conduct is not compatible with a sincere effort to bargain collectively with one's employees.

We fail to see in the respondent's conduct anything other than a refusal on its part to bargain collectively with the representative of its old employees. This, especially in conjunction with the negotiations of the respondent with the four men individually, constituted a violation of the respondent's duty to bargain collectively with the representative of its employees.

We are the less hesitant in reaching this conclusion because the record shows that following the strikes in May and June, the respondent had become antagonistic to the MESA. Thus, when, late in July, Charles Rudd, an old MESA man, complained to Hilliard J. Sands, the superintendent, that the MESA men were being intimidated while new men were being asked to join the International Association of Machinists within 15 days after they began to work, contrary to an oral understanding with the management, Sands replied that the management would rather have the International Association of Machinists than the MESA because the former was more conservative and did not call strikes often. Likewise, after Jack Norman was dismissed about June 26, 1935, for incompetency, he was told by Edward McKiernan, assistant superintendent, not to worry, that he would be taken back as soon as the respondent was rid of the MESA.

The whole conduct of the respondent leaves no other reasonable inference than that the old employees were locked out, discharged and refused employment because they were members of the Mechanics Educational So-

Decision

ciety of America and had engaged in concerted activities for the purpose of collective bargaining.

By failing to recall its employees who were members of the Mechanics Educational Society of America, and by requiring that four of them join the International Association of Machinists as a condition of employment, the respondent discriminated against its employees in regard to tenure of employment, and thereby discouraged membership in the Mechanics Educational Society of America, a labor organization.

By refusing to bargain collectively with the representative of its employees, and by discriminating against its employees in regard to tenure of employment, the respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The men discharged were: Tony Avon, Clarence Ball, Joseph Blaha, William Brandt, Frank Dolish, C. J. Dusek, Albert Farrell, H. H. Garms, John Greeley, Mike Hudak, Lada Jindra, Leo Kahn, Stanley Linski, H. J. Meyer, Tony Moraco, Martin Moritz, Louis Nagy, Elmer Ochs, Frank Pansky, John Pansky, John Popp, C. E. Rudd, Ed. Stack, Joe Swancer, Emil Tulow, W. Bakum, Charles Becks, Joseph Bondra, Stanley Dymidowski, Max Feinstein, Carl Frank, Robert Herman, Robert Hronek, Myron Kanner, Emmett Kenna, Joseph Kozlowski, Willard Kraus, Louis Meyers, John Patchford, Henry Schilthorn, George Seveck, William Sumanek, John Sweitzer, Harold Wenger, Matthew Wiersch, Clarence Wisniewski, Joseph Wycikowski.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON INTERSTATE COMMERCE

The respondent contends that since the picketing which took place after its plant was reopened in September did not interfere with the operations of its plant, and commerce was therefore in no wise affected, the Board has no jurisdiction. The remedy provided by the Act is preventive. There is therefore no necessity that an actual obstruction to commerce exist in each case before the Board assumes jurisdiction. It is sufficient if the acts of the respondent lead or tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce. Furthermore, during the strikes in May and June, 1935, the plant of the respondent was completely shut down.

Decision

We find that the aforesaid acts of the respondent have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. THE REMEDY

In administering the remedies provided by the Act, and wishing to protect the right to collective bargaining of the employees of the respondent who were locked out and discriminatorily discharged, the Board considers it imperative that these employees be reinstated to employment by the respondent on the same basis as to wages and other conditions of employment that existed prior to August 21, 1935, with back pay from September 3, 1935, when the plant reopened, to the date of offer of such reinstatement, less amounts earned by each during such period.

CONCLUSIONS OF LAW

Upon the basis of foregoing findings of fact, and upon the entire record in the proceeding, the Board finds and concludes as a matter of law:

1. The production and maintenance departments of the plant of the respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

2. The Mechanics Educational Society of America is a labor organization within the meaning of Section 2, subdivision (5) of the Act.

3. By virtue of Section 9(a) of the Act, the Mechanics Educational Society of America, having been designated as their representative for the purposes of collective bargaining by a majority of the employees in an appropriate unit, was the exclusive representative of all the employees in such unit for the purposes of collective bargaining.

4. The respondent, by refusing to bargain collectively with the representative of its employees, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the Act.

5. The respondent, by discriminating in regard to tenure of employment, and thereby discouraging membership in the Mechanics Educational Society of America, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

Decision

6. The respondent, by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of the Act.

ORDER

On the basis of the findings of fact and conclusions of law and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Sands Manufacturing Company, and its officers, shall:

1. Cease and desist:

(a) from interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection;

(b) from discouraging membership in the Mechanics Educational Society of America by discrimination in regard to tenure of employment or any term or condition of employment; and

(c) from refusing to bargain collectively with the Mechanics Educational Society of America as the exclusive representative of all its production and maintenance employees, other than those engaged in a supervisory or clerical capacity, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

2. Take the following action, which the Board finds will effectuate the policies of the Act:

(a) offer to all of the employees listed in part IV of the findings of fact immediate and full reinstatement, respectively, to their former positions with all the rights and privileges previously enjoyed;

(b) make whole said employees for any losses of pay they have suffered by reason of their discharge by payment, respectively, of a sum of money equal to that which each would normally have earned as wages during the

Intermediate Report

period from September 3, 1935 to the date of offer of reinstatement, computed at the wage rate each was paid prior to discharge, less the amount which each may have earned during such period, and in the event of any dispute as to the amount due, the dispute shall be laid before this Board, for determination within the terms set forth in this Order; and

(c) upon request, bargain collectively with the Mechanics Educational Society of America as the exclusive representative of all its production and maintenance employees, other than those engaged in a supervisory or clerical capacity, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

Signed at Washington, D. C., this 17th day of April, 1936.

JOHN M. CARMODY, *Member*,
EDWIN S. SMITH, *Member*,
NATIONAL LABOR RELATIONS BOARD.

(SEAL)

INTERMEDIATE REPORT

Upon charge duly made, and acting pursuant to authority granted in Section 10(b) of the National Labor Relations Act, approved July 5, 1935, Ralph A. Lind, agent of the National Labor Relations Board designated by National Labor Relations Board Rules and Regulations, Series 1, Article IV, Section 1, issued its complaint dated November 12, 1935, against The Sands Manufacturing Company, respondent herein. The complaint and notice of hearing thereon were duly served upon respondent on November 12, 1935, in accordance with said Rules and Regulations, Series 1, Article V,

Intermediate Report

Section 1. The complaint alleged that the respondent has engaged in and is engaged in unfair labor practices within the meaning of an act of Congress, approved July 5, 1935, and known as the Wagner Act.

The complaint alleges that on or before June 15, 1935, the Mechanics Educational Society of America, also known as the M.E.S.A., a labor organization, contained within its membership a majority of the employees in the production and maintenance departments at the plant of respondent; that the said M.E.S.A. had been designated by the said membership of employees in the plant of the respondent to be their representative for the purposes of collective bargaining; that ever since June 15, 1935, the said M.E.S.A. has been the representative of a majority of the employees in the said production and maintenance departments and have been the exclusive representatives in the said productions and maintenance departments for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

The complaint further alleges that on June 15, 1935, the respondent entered into a collective agreement with a committee of four (4) of its employees described therein as representing the employees and said members of the M.E.S.A., said agreement covering rates of pay, hours of employment, and other conditions of employment of the employees in the said production and maintenance departments, and said agreement covering a term beginning, retroactively, June 1, 1935, and ending March 1, 1936.

Complaint further alleges that subsequent to said agreement the respondent, on July 23, 1935, August 21, 1935, and on other dates during the months of July and August, 1935, and on September 3, 1935, notified seventy-five (75) of the said employees that their services, and the services of each of them, would not be required for a temporary and indefinite period.

Complaint further alleges that the respondent, on September 3, 1935, entered into a collective agreement covering rates of pay, hours of employment, and other conditions of employment of employees in the said production and maintenance departments with District No. 24, International Association of Machinists for a term beginning September 3, 1935, and ending September 3, 1936.

The complaint further alleges that on or about September 6, 1935, and at various times thereafter, respond-

Intermediate Report

ent employed in its production and maintenance departments certain persons not heretofore employed by respondent in said departments, and recalled to employment certain of the said seventy-five (75) employees who had been ordered to cease work as aforesaid, but that the respondent failed or refused to recall to employment forty-eight (48) of the said seventy-five (75) employees, and that the respondent refused to reinstate the said employees and discharged them for the reason that the said employees joined and assisted the Mechanics Educational Society of America, a labor organization, and that the said employees were engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

That by reason of such refusal to reinstate the said employees and by their discharge, the respondent did discriminate, and is discriminating, in regard to the hire and tenure of employment of said employees, and did discourage and is discouraging membership in the M.E.S.A., and respondent did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, Subsection 3 of said Act.

That by entering into a collective agreement covering rates of pay, hours of employment and other conditions of employment with District No. 24, International Association of Machinists, at a time when a majority of the said employees had designated the M.E.S.A. as their representative for the purposes of collective bargaining with respondent, the respondent did engage in and is engaging in unfair labor practice within the meaning of Section 8, Subsection 5 of the said Act.

The complaint further alleges that the respondent is engaged in commerce among the several states as defined by the said Act, and that the said unfair labor practices burden and obstruct such commerce and the free flow thereof and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof.

Complaint finally alleges that the acts of the respondent as described therein constitute unfair labor practices affecting commerce within the meaning of Section 8, Subdivisions 1, 3 and 5, and Section 2, Subdivisions 6 and 7 of said Act.

Thereafter respondent filed its answer to complaint alleging want of jurisdiction of the National Labor Relations Board and unconstitutionality of the said Act of Congress in that said Act contravenes the 4th, 5th, and

Intermediate Report

10th Amendments to the Constitution of the United States.

Respondent admits it is an Ohio corporation, admits that it was organized in 1913 and that ever since its organization it has had its principal office and place of business in the County of Cuyahoga and State of Ohio, and admits that it is engaged in the manufacture, sale and distribution of gas and kerosene water heaters. Respondent admits that in the course and conduct of its business it purchases some raw materials from sellers, some, but not all of whom have their offices and places of business in states other than the State of Ohio. It admits that it causes and has caused a large proportion of its heaters to be sold and transported in interstate commerce from its plant in the State of Ohio and through other states of the United States. It alleges, however, that a large part of its raw materials are purchased within the State of Ohio and that much of its products are sold by it to purchasers within the State of Ohio and without crossing state lines. It denies that it participates in or is engaged in activities which constitute a continuous flow of commerce within the several states.

Respondent admits that the employees of its production departments constitute a unit appropriate for the purpose of collective bargaining but denies that it would be appropriate to include its maintenance man in such a unit.

Respondent denies that a majority of the employees have designated the M.E.S.A. as their representative for the purpose of collective bargaining with respondent and denies that since June 15, 1935, the M.E.S.A. has been such representative. Respondent alleges that in April, 1934 a majority of its employees, thirty-two (32) in number, designated in writing a committee of three (3) of their number to be their representatives for the purpose of collective bargaining, and with such designation requested permission for the representatives of the M.E.S.A. to be present in any dealings between the respondent and said committee, should occasion arise, and that the designation was accepted and the request granted. The respondent alleges that on and ever since June 15, 1935, the said representation was vested in the aforesaid committee of employees, or their successors by substitution and enlargement, and that the said committee was the only representative of its employees for the said purpose of collective bargaining.

Intermediate Report

Respondent admits that on or about June 15, 1935 it entered into a collective agreement covering rates of pay, hours of employment, and other conditions of employment of its employees in its production departments for a term beginning retroactively June 1, 1935, and ending March 1, 1936 and avers that the said agreement was made with a committee of four (4) of its employees described therein as representing the employees and members of the M.E.S.A., respondent denies that said agreement covered the maintenance department.

Respondent denies that on July 23, 1935, August 21, 1935, and other dates during the month of July and August, 1935, and on September, 1935, it notified seventy-five (75) of its employees that during a temporary and indefinite period of time their services would not be required. It alleges that on July 22, 1935 it had sixty-one (61) employees in its production departments and that during the latter part of July, 1935, because of lack of orders, it reduced its working force so that on August 3, 1935 it employed thirty-one (31) men, two (2) of whom were watch men and two (2) of whom were employed in the tool room; and states that for lack of work on August 10, 1935, it discharged four (4) other men, and that on August 17, 1935, because of lack of work, it discharged three (3) other men. It states that on August 17, 1935, it had in its employ only twenty-four (24) men and that on August 21, 1935, it posted a notice to the effect that the plant would be shut down that night until further notice. Respondent further states that for a period of about three (3) weeks prior to August 21, 1935, because of lack of work, its employees had worked only three (3) days per week.

Respondent admits that on September 3, 1935, it entered into an agreement covering rates of pay, hours of employment, and other conditions of employment with employees in its production departments with District No. 54 of the International Association of Machinists covering a term beginning September 3, 1935 and ending September 3, 1936, alleges that the said Association is an affiliate of the American Federation of Labor, that the said agreement was not a close shop agreement, and that the said agreement was cancelled by mutual consent of the parties on or about September 10, 1935.

Respondent alleges that it reopened its plant on September 3, 1935, and that on or about September 6, 1935,

Intermediate Report

and at various times thereafter, it employed in its production departments certain persons not theretofore employed by it in said departments as well as certain other workmen who had been theretofore employed by it, and that it did not recall to employment a large number of workmen previously employed by it. It denies, however, that at the time of the reopening of its plant it refused employment to any of its previous employees and alleges that with the exception of a very few, none of its other previous employees have applied to it for re-employment on the said date or at any time thereafter.

Respondent denies that it discharged or refused to reinstate any employees for the reason that said employee joined or assisted the M.E.S.A., or engaged in certain activities with other employees for the purpose of collective bargaining or other mutual aid or protection.

Respondent denies that it has interfered, restrained, coerced, or is interfering with, restraining, or coercing its employees in the exercise of their rights, as set forth in Section 7 of the Act, denies that it has engaged in or is engaging in any unfair labor practices within the meaning of Section 8, Subdivision 1 of said Act or of any other Subdivisions of said Act.

Respondent denies that it has discriminated or is discriminating in regard to the hire and tenure of employment of its employees or that it discouraged or is discouraging membership in the M.E.S.A.

Respondent alleges that it has at all times bargained collectively with the duly authorized representatives of its employees who were such employees prior to August 21, 1935, and avers that it has never refused to meet with a committee representing such employees. Since August 21, 1935 no meetings with respondent have been requested by the said committee. Respondent alleges that it stands ready to bargain collectively with its present employees and that it has never refused to bargain collectively with them through their duly authorized representatives.

Respondent denies that any of its acts in reference to or in connection with its employees has occurred in commerce with its employees in the several states, denies that they burden or obstruct commerce among the several states or the free flow thereof, or that they have led or tend to lead to labor disputes which burden or obstruct such commerce and the free flow thereof. Respondent avers that it has at all times filled its custo-

Intermediate Report

mer's orders promptly and that it has purchased and received delivery of raw materials promptly and in a normal manner. Respondent avers that it buys lumber, copper, tanks, gas valves, iron castings and other finished or partly finished raw materials, for the purpose of manufacturing, processing or assembling them into its finished parts; that all of the manufacturing, processing, assembling is done at the respondent's plant in the City of Cleveland; that all of the respondent's products are packed and crated for shipment in Cleveland, Ohio, and that all of its employees in its production departments are residents of the State of Ohio.

Respondent's answer contains its alleged statement of facts as to the background and history of its relations and dealings with its employees beginning with April 21, 1935. Respondent alleges that the employees' committee violated the terms of the contract of June 15, 1935 by refusing to permit respondent to increase its machine shop crew without first taking men from other departments. Respondent avers that while negotiations were continuing, it attempted to enlarge its machine shop force by making some transfers from other departments but found the work of the men transferred to be unsatisfactory, that when the said committee was informed by respondent's officers that in accordance with the contract additional men, whose workmanship would be reasonably satisfactory, should be hired for the machine shop, the said committee insisted that the respondent take men from the other departments or close its plant.

Respondent further alleges that the activities of the committee and its constituents resulted in a lack of plant discipline, that plant foremen were members of the M.E.S.A. with but two exceptions, and that said foremen who were members of the M.E.S.A. permitted inefficiency, insubordination, and a reckless disregard of employees' reasonable obligations to respondent to go unchallenged, and that said foremen discriminated in favor of the members of the M.E.S.A. and against non-members of the M.E.S.A. Respondent further avers that members of the M.E.S.A. had attempted to force all employees to join the M.E.S.A. and that they had sought to compel the discharge of all non-members of the M.E.S.A. Respondent avers that instructions had been given by the committee or the M.E.S.A. to its constituents not to speak to two of the foremen, that such instructions were carried out by the employees, and that as a result of many of the foremen's instructions,

Intermediate Report

given to the employees in the ordinary course of business, were ignored. Respondent avers that by reason of the foregoing and other similar detailed facts set forth in its answer, it considered the agreement of June 15, 1935 as breached by its employees and in consequence posted a notice on August 21, 1935 to the effect that the shop would be closed indefinitely that evening and that it discharged and paid off in full all of its employees, except a watchman or two and two tool makers, and that the plant remained closed until September 3, 1935.

Respondent alleges that since reopening its plant it has had workmen from time to time until at the present time the plant is fully manned with a normal working force, and that the respondent did not ask any of the employees represented by the said employees' committee to work in the machine shop following such reopening of the plant. The respondent further alleges that the said employees' committee attempted to compel the alteration of the said agreement of June 15, 1935 so that it would be changed into a closed shop agreement by preventing the hiring of workmen who were members of another union and which action was in effect a breach of the said contract.

Respondent in its answer further avers certain alleged facts pertaining to its relations with the M.E.S.A., Harry Potter, State Chairman of the M.E.S.A., the picketing of the plant subsequent to September 3, 1935 following the protest against the employment of new employees.

The answer further denies each and every allegation and averment in said complaint contained not specifically admitted to be true in the said answer.

Pursuant to the notice of hearing, the undersigned, as agent of the National Labor Relations Board designated by said Rules and Regulations, Series 1, Article IV, Section 3, and Article II, Section 22, conducted a hearing on Monday, November 25, 1935, at 10:00 o'clock A. M. The respondent, appearing by its officers, Garry Sands and Herbert J. Sands, and by Stanley & Smoyer, attorneys for the respondent, participated in the hearing. The hearings continued with morning and afternoon sessions daily to and including Saturday, November 30, 1935, excepting Thanksgiving Day, November 28, 1935. Full opportunity to be heard, to cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties. By agreement of the

Intermediate Report

parties, short briefs pertaining to legal questions were to be filed and oral arguments were waived.

Upon the record as thus made, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing the undersigned makes, in addition to the above, the following specific findings of fact:

1. Respondent is, and has been continuously ever since May, 1913, an Ohio corporation, with its principal office and place of business in the County of Cuyahoga and State of Ohio; and the said respondent has its principal office and place of business at 5407 Sweeney Avenue, Cleveland, Ohio, and the said respondent is engaged in the manufacture, sale and distribution of gas and kerosene water heaters.

2. The relations between the respondent and its employees, members of the M.E.S.A., and the M.E.S.A. began in April, 1934 when thirty-two (32) of its employees designated in writing that a committee of three of their number be their representatives for the purpose of collective bargaining and in the same writing requested that representatives of the M.E.S.A. be present at the dealings between the respondent and the said committee. The said thirty-two (32) employees were a majority of respondent's employees and constituted practically all of the employees in its plant, some two or three others in the plant being the only ones excepted. The said committee of employees were Harry Potter, Clarence Dusek and Lada Jindra. Shortly afterwards, negotiations were had between this committee and respondent and an agreement was reached on or about May 2, 1934 covering a period of sixty (60) days. By mutual consent, the parties continued to operate thereunder until some time in May, 1935.

In the fall of 1934, respondent was endeavoring to obtain a contract with the United States government for the manufacture of a large amount of merchandise and in consequence arranged a meeting with the committee and requested and secured the approval of the said committee to an understanding that new and additional workmen should be hired to complete such an order and that the said new and additional workmen were to be discharged when the said order had been completed. New and additional workmen were hired and the order was completed in December, 1934, and the new and additional men were discharged. There were some thirty-five (about) men employed as new men during the work on the governmental order and of these

Intermediate Report

all but about three (3) became members of the M.E.S.A. while so employed.

On or about May 13, 1935, a committee of the employees presented certain demands to respondent, negotiations were had, the negotiations were not successful, and a strike was called and occurred on or about May 21, 1935. Further negotiations continued and an oral agreement was apparently reached on or about June 1, 1935 and that pending the drafting of a written agreement, the respondent's factory was to be opened on June 3, 1935 and that all employees of May 20, 1935 should return to work; there is some dispute as to five (5) men who, respondent claimed, are inefficient and who should not, respondent claims, be returned to work. Because of the refusal or failure of respondent to take back the said five (5) men, the employees, on June 6, 1935, no written agreement having been drafted or signed, went back out on strike. Further negotiations continued and on or about June 15, 1935, a written agreement was reached and signed by respondent and the said committee, the personnel of the said committee having changed somewhat in the meantime. On June 17, 1935, all of the employees returned to work. The employees have always maintained and insisted that workmen, members of the M.E.S.A., be discharged for inefficiency only upon and after hearing held before the management and the committee. The employees insisted that only specific charges be considered and that any such charges must relate to facts or incidents subsequent to June 15, 1935.

Following the said agreement of June 15, 1935, a Mr. Jack Norman was discharged for inefficiency with the consent of the committee after a hearing before the management and committee. No formal charges of inefficiency against any of the others or hearings before the committee in pursuance thereto occurred, respondent having failed to proceed with any such hearing before the said committee.

Difficulties between the employees and members of the M.E.S.A. and the respondent arose from their respective interpretations of the provisions of the said written agreement of June 15, 1935. The agreement follows:

Intermediate Report

Cleveland, Ohio,
June 15, 1935.

The Sands Mfg. Co.,
5407 Sweeney Ave.,
Cleveland, Ohio.

Gentlemen:

This agreement entered into between the Sands Mfg. Co. and the undersigned, who represent the employees and members of the M.E.S.A. This agreement to be in force from June 1, 1935 to March 1, 1936. Negotiations can be started 30 days before expiration of contract.

(1) That the undersigned, or others who may be designated by the employees, shall be recognized as the committee to meet with the management for collective bargaining and at no time shall an individual be recognized unless accompanied by two or more shop committeemen.

(2) That all men, who were on the pay roll as of May 20, 1935, be returned to work without any discrimination.

(3) That no employee will be discharged before he has had a hearing before the shop committee and the management. The complaining foreman or foremen shall be present at these hearings and present his case.

(4) That in case of a shortage of work, the employees shall be notified twenty-four (24) hours before the lay-off becomes effective.

(5) That when employees are laid off, seniority rights shall rule, and by departments.

(6) That when one department is shut down, men from this department will not be transferred or work in other departments until all old men only within that department, who were laid off, have been called back.

(7) That all new employees be laid off before any old employees, in order to guarantee if possible at least one weeks full time before the working week is reduced to three days.

(8) That the working week shall consist of five days, beginning Monday A. M. and ending Friday P. M. The working day shall be eight hours of Twenty-four and all over eight hours shall be paid for at the rate of time and one-half. Time and one-half shall prevail for all Saturday work unless a holiday comes within the week and then Saturday shall be worked at

Intermediate Report

straight time. Double time shall be paid for all Sundays and Holidays.

(9) That all old employees receive 2c per hour increase in pay and all new employees prior to May 21, 1935 receive the 10% already granted.

(10) That before any new men are employed, the committee shall be notified to that effect. Men employed as of May 21, 1935 are considered already employees.

(11) That all new employees in the future shall have the right to join any labor organization any time they so desire.

(12) That when a new employee is taken on, the company will have the right to discharge him within fifteen days providing he is unable to do the work, through the approval of the foreman. After fifteen days the employee in question shall be granted a hearing before the shop committee and the management.

(13) That after ninety days work any new employee shall receive an automatic increase in pay bringing his hourly rate up to and equal with the other low bracket employees.

(14) Mill wright work that can be done without the aid of outside help shall be done by the old employees, providing that the new millright is not at hand.

(15) That Harry Gassell and Milburn Moritz be discharged immediately and not be re-hired at any time nor will they be employed to do any work for the Sands Realty Co.

(16) All Carbecks' relatives be discharged immediately.

(17) That the committee have the right to make inquiry into any complaint that may be made by any employee.

(18) That the old employees are to be all men in the employ of the company at the time the original agreement was signed and prior to the government order. That the new men, as stated above, be considered as the second section of employees and men who were employed at the time of the government order during the fall of 134.

(19) That if any employee resigns, he automatically loses his seniority rights and if, at any time, he may be re-employed, he is to receive the same wages as he

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

9

3

8

9

9



Intermediate Report

was being paid at the time he left the employ of the company.

(20) In case of a misunderstanding between the management and the employees, the committee shall allow the management forty-eight (48) hours to settle the dispute, and if then unsuccessful the committee shall act as they see fit.

THE SANDS MFG. Co.,
(s) GARRY SANDS, *Treasurer.*

(s) TONY J. MORACO,
(s) L. JINDRA,
(s) C. J. DUSEK,
(s) F. PANSKY,
The Committee.

It should be noted that in the first draft submitted by the employees and members of the M.E.S.A., Paragraph 5 of the agreement of June 15, 1935 did not contain the last three words "and by departments." These words were included in the final agreement.

Because of the shutdown by reason of the strikes, orders had piled up. After the men had returned to work on June 17, 1935, following the agreement of June 15, 1935, and in order to complete the orders that had been piled up, the respondent employed approximately thirty (30) additional men, some of whom were former employees of the respondent at the time the governmental order was being filled, and many of whom were new, having never before worked for respondent. By the middle of July practically all of the accumulated orders had been filled and the respondent proceeded to reduce its working force. Respondent called in the employees in the tank heater department and proceeded to lay off all of the men in the tank heater department except one. There were some seven or eight employees in the tank heater department who were laid off and the one who was retained was the foreman. These lay-offs occurred about July 15, 1935. By August 1, 1935, respondent had laid off practically all of its employees save the original thirty-one (31), sometimes designated as "old men," and during the early part of August, 1935, operated the plant on a three day a week basis. There were a few more lay-offs during the early part of August.

The respondent, although other departments were being operated on a part time basis and some of the

Intermediate Report

departments had been practically shut down, wished to increase its machine shop department and a number of conferences were held between the management and the employees in reference thereto. A principal matter in dispute was the position the management took in its request that new men, experienced in machine shop work, be employed in preference to the so-called "old men" who had been in the employ of the respondent for a number of years, who had been shifted from department to department from time to time, some of whom had more and some less experience in the machine shop department, and who, subsequent to their return to work on June 17, 1935, had been placed by the management in a department other than the machine shop department. The management pointed to Article 5 of the agreement of June 15, 1935 which provided "That when employees are laid off, seniority rights shall rule, and by departments." For many years, both before and after the organization of employees of respondent and the M.E.S.A., it had been the practice at the respondent's plant to transfer men from one department to another when the work to be done in one department required additional help while the other department from which the men came had slowed down and did not require their services. Even after the agreement of June 15, 1935, remembering that Article 5 in said agreement was the result of negotiations due to differences of opinion between the management and the men, the same practice prevailed. However, during the latter part of July and the early part of August, 1935, the management was dissatisfied with this practice and held a number of conferences with the men in an attempt to increase its working force in the machine shop department by hiring newer men with machine shop experience in preference to older men who were considered as less efficient by the management.

On the other hand, the employees took the position that the older men had had experience in the machine shop department, some more, and some less, that they were able to do the work efficiently, that the management was attempting to supplant the older men who, by reason of their long services, were higher priced, and that the management was really attempting to replace old M.E.S.A. workers with new workers who were or would be members of a rival A. F. of L. union favored by the management. The employees pointed to a number of old men who had been laid off and

Intermediate Report

who had had experience in the machine shop and wanted these old men returned to work in the machine shop before any new men were hired, and that such old men from other departments and with machine shop experience who were able to do such work in the machine shop, should, if there is no work in the other departments, be put in the machine shop department and newer men from the machine shop department laid off instead. At this time the men also objected to the further increase and build-up of the machine shop department and the closing down of other departments on the ground that there was an ample supply of parts.

About the middle of August the men were given the alternative of a temporary build-up and increase in the machine shop department with a temporary slow-down and shutdown in other departments on the one hand and a temporary complete shutdown of the plant on the other and were asked to report to the management after the shop committee had consulted with the men which of these alternatives they preferred. These alternatives were given to the employees on or about August 19, 1935. A few days later, on August 21, 1935, the committee again met with the management and chose the alternative which provided for the temporary complete shutdown of the plant. On August 21, 1935, the management placed a notice on the time clock to the effect that the plant would shut down Wednesday night, August 21, 1935, until further notice.

Following this shutdown, the respondent, dissatisfied with the state of affairs existing between itself and its employees and the M.E.S.A., proceeded to negotiate with a machinists' union affiliated with the American Federation of Labor and on or about September 3rd entered into a written agreement with the International Association of Machinists, District No. 54, affiliated with the American Federation of Labor and on the same day began operating its machine shop and reopened its plant. A copy of said agreement has been introduced in evidence as Board Exhibit No. 4. The M.E.S.A., and the shop committee to which reference has already been made and the old employees, with the exception of some four (4) men, hereinafter named, were not notified or in any way advised to return to work and to this day have not received a notice or request to return to work. Four men, "old men" and members of the M.E.S.A., were called in by respondent. Conferences between the management and these indi-

Intermediate Report

vidual men were held: the management endeavored to secure the return of these four individual men under new wage agreements calling for reduced hourly wages with increased rates at later dates. In these conferences the management pointed out to the men that they were now operating the shop under an agreement with an A. F. of L. union and in one case assisted the man in obtaining an application blank of the said A. F. of L. union. Although this one man signed the said application blank, he did not pay his dues and neither he nor any of the other three "old men" returned to work under any such new arrangement. In order to reopen the plant the management sent telegrams to each of their workers who were members of the A. F. of L. union and in addition called upon the Cuyahoga County relief organization to supply additional workers. When the M.E.S.A. men discovered the plant in operation on September 3, 1935, they met with Mr. Potter, an officer of the M.E.S.A., and Mr. Potter, in their behalf, communicated by telephone with the management. There is a difference of opinion as to what Mr. Garry Sands of the management said at this telephone conversation. I find that Mr. Potter protested against what he considered a lock-out of all the old men, that Mr. Garry Sands stated that he had signed a contract with the A. F. of L. union and that he considered the contract with the M.E.S.A. of no effect. Mr. Sands states that the conversation was as follows: (Page 699)

Q. (By Mr. Smoyer) What was the conversation?

A. He says, "Garry," he says, "what is this I hear about the men reporting the plant running?" I said, "That's right." I said "The MESA Union have broken their contract and we are now operating under the A. F. of L. signed agreement, signed contract." He flew up in the air. He flew up in the air and he says, "Don't you know that is a violation of the Wagner bill," and started—

Trial Examiner Danaceau: Just what did he say?

A. He said "Don't you know it is a violation of the Wagner bill," and he answers this was so and so and so and so and so and so and so. I said, "I can't help it. The men have broken the agreement and we have signed an agreement with the A. F. of L." He said, "I am going to picket the plant immediately and file a complaint under the Wagner bill," and that was all the conversation.

Intermediate Report

The men immediately started picketing the plant and continued their picketing during the month of September. The plant continued its operations, the old men were not taken back.

On or about September 10, 1935, at the request of the respondent, the contract between the respondent and the International Association of Machinists, District No. 54, affiliated with the American Federation of Labor, was cancelled by mutual consent of the respective contracting parties. Respondent has continued to operate its plant, is well satisfied with its present workers and working arrangements, and has not notified or requested any of its old men or members of the M.E.S.A., with the exception of the four individuals to whom reference has already been made, to return to work. It has in effect locked out all of the old employees and will not reinstate the said employees, members of the M.E.S.A., or replace its present workers with the said old employees and members of the M.E.S.A., and the respondent has in effect discharged said old employees and members of the M.E.S.A.

The old men, members of the M.E.S.A. thus locked out and discharged are Tony Avon, Clarence Ball, Joseph Blaha, William Brandt, Frank Dolish, C. J. Dusek, Albert Farrell, H. H. Garms, John Greeley, Mike Hudak, Lada Jindra, Leo Kahn, Stanley Linski, H. J. Meyer, Tony Moraco, Martin Moritz, Louis Nagy, Elmer Ochs, Frank Pansky, John Pansky, John Popp, C. E. Rudd, Ed. Stack, Joe Swancer, Emil Tulow, W. Bakum, Charles Becks, Joseph Bondra, Stanley Dymidowski, Max Feinstein, Carl Frank, Robert Herman, Robert Hronek, Myron Kanner, Emmett Kenna, Joseph Kozlowski, Willard Kraus, Louis Meyers, John Patchford, Henry Schilthorn, George Sevcik, William Sumanek, John Sweitzer, Harold Wenger, Matthew Wiersch, Clarence Wisniewski, Joseph Wycickowski. This list appears on Page 746 of the report of the proceedings and the said list on Page 747 includes the name of Jack Norman, who had had a hearing before the management and the shop committee and had been discharged following the said hearing and with the approval of both the management and shop committee.

I find that the said members of the M.E.S.A. were locked out and discharged by respondent on or shortly before August 21, 1935 and that they have since been refused employment by respondent for the reason that

Intermediate Report

they have joined and assisted a labor organization known as Mechanics' Educational Society of America and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection. By said lock-out, discharge, and refusal to employ its said employees who were members of the M.E.S.A., respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act. By said lock-out, discharge, and refusal to employ its said employees who were members of the M.E.S.A., respondent has discouraged membership in the labor organization known as Mechanics' Educational Society of America.

(3) The respondent obtains raw materials in the form of brass, castings, sheet iron, steel tanks, tubing, packing material, and other miscellaneous material from the states of Ohio, Michigan, Connecticut, Massachusetts, New York, Illinois, Wisconsin, West Virginia, Virginia, and other states, and during the period from January 1, 1935 to October 1, 1935 its purchases of raw materials totalled the sum of \$181,828.51, of which the purchases from within the state of Ohio totalled \$106,616.31.

The respondent ships and transports and causes to be shipped and transported tank heaters, storage heaters, instantaneous heaters, and valves and other parts produced and sold by it, to the value of \$318,117.08 during the period from January 1, 1935 to October 1, 1935, of which sales within Ohio were \$34,091.17 and sales outside of Ohio therefore were \$284,025.91. The states to which the said shipping and transporting was made are Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming.

The respondent does not own any trucks or other vehicles which are used in transporting its raw materials or products from or to other states. It ships its articles chiefly by common carrier to various ware-

Intermediate Report

houses, not owned or operated by respondent, throughout the nation and from these warehouses completes the filling out of the various individual orders. Its raw materials are also delivered to it by common carrier or by truck, not owned or operated by respondent.

As a result of the difficulties between the management and the employees during the latter part of May and the early part of June as hereinbefore set forth and the current shutdown, orders had piled up and respondent was unable to make shipment of the said orders until an agreement was reached and the employees returned to production. According to the respondent's Exhibit No. 7, orders received on May 20, 1935 from Milwaukee Gas Light Company, on May 22, 1935, from J. M. Buday of Newark, New Jersey, on May 27, 1935, and from the Sands Heater Company of Boston, Massachusetts, were not shipped until June 21, 27, and 24, 1935, respectively. The fact that respondent was piling up its orders as a result of these labor difficulties explains why the order from Gas Appliance Company of New Orleans, Louisiana, on June 1, 1935, was not shipped until July 2, 1935 and the order from Milwaukee Gas Light Company on June 3, 1935 was not shipped until June 28, 1935.

Since the closing of the plant on August 21, 1935 and its subsequent opening on September 3, 1935 with a new force of men, although the plant has been picketed during the entire month of September, no evidence has been submitted that would show that any orders had not been filled promptly or the shipment of any orders delayed.

Upon the basis of the foregoing findings of fact, the complaint, the answer of the Sands Manufacturing Company, the testimony, the exhibits, and all of the evidence, the undersigned hereby determines and concludes that (1) respondent by locking out, discharging, and refusing to employ the above-named employees, and by interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, has engaged and is engaging in unfair labor practice affecting commerce within the meaning of Section 8, Subdivision 1 and Section 2, Subdivisions 6 and 7 of the National Labor Relations Act; (2) respondent by locking out, discharging and refusing to employ the above-named employees and by discouraging membership in the labor organization known as the Mechanics' Educational So-

Intermediate Report

ciety of America, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, Subdivision 3 and Section 2, Subdivisions 6 and 7 of the National Labor Relations Act.

I find that there is insufficient evidence to establish the claims of respondent that there was a lack of plant discipline, that foremen, who were members of the M.E.S.A. permitted inefficiency, insubordination, and a reckless disregard of employee's reasonable obligations to respondent to go unchallenged, that said foremen discriminated in favor of the members of the M.E.S.A. and against non-members of the M.E.S.A., or that the work of the men or the business of the respondent suffered by reason of any such attitude or activity.

WHEREFORE the undersigned recommends that:

(1) Respondent cease and desist from interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, and from discouraging membership in any labor organization by discrimination in regard to tenure of employment or any term or condition of employment;

(2) In order to effectuate the policies of the Act, respondent:

(a) offer immediate and full reinstatement to their former positions to the said employees, with all rights and privileges previously enjoyed,

(b) file with the Regional Director for the Eighth Region, on or before February 1, 1936, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.

In the opinion of the undersigned there has existed a reasonable and honest difference of opinion regarding the meaning and interpretation of Article No. 5 of the agreement of June 15, 1935 and of Articles Nos. 6, 7, 10, 12 and 18. It is the opinion of the undersigned that much of the difficulties might have been averted had the said employees given greater consideration to the wishes of the management in its operation of its plant, particularly in its desire to increase production

Intermediate Report

in the machine shop department during the middle of August, 1935. Because of this reasonable and honest difference of opinion and because, in my opinion, much of the difficulty might have been avoided by the employees, although the respondent was not justified in its subsequent action of locking out and discharging its employees as hereinbefore set forth, it is the recommendation of the undersigned that if the respondent shall comply with the recommendations hereinbefore set forth, and thus reinstate to their former positions the said employees with all the rights and privileges they previously enjoyed, that the respondent be released from any obligation to pay the said employees any money by reason of their unemployment following their said lock-out and discharge.

It is further recommended that unless within fifteen (15) days respondent notify said Regional Director in writing that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board and that said Board issue an order requiring respondent to take the action aforesaid.

The motions of the respondent to dismiss the complaint made and renewed during the hearing of this case are hereby overruled.

Dated this 26th day of December, 1935.

SAUL S. DANACEAU,
Trial Examiner.

RESPONDENT'S EXCEPTIONS TO INTERMEDIATE REPORT

Now comes the respondent, The Sands Manufacturing Company, and, renewing all of its objections heretofore made to the constitutionality of all and several the provisions of the National Labor Relations Act, excepts to the Intermediate Report of Saul S. Danaeuan, Trial Examiner herein, dated December 26, 1935, and served upon respondent December 28, 1935 by registered mail, severally and as follows:

FIRST: Respondent excepts to the following finding of fact:

"Difficulties between the employees and members of the M.E.S.A. and the respondent arose *from their respective interpretations* of the provisions of the said written agreement of June 15, 1935." (P. 11)

on the ground that said finding is not sustained by the evidence and is contrary to the evidence, which evidence is as follows:

That the dispute involved chiefly Article 5 of the agreement of June 15, 1935 (Moraco, R. pp. 309, 310-314; Pansky, R. p. 434), especially the words "and by departments" in said Article 5. (R. p. 309, 310.)

That the words "and by departments" were not included in Article 5 of the tentative agreement proposed by the committee during the negotiations leading up to the agreement of June 15, 1935 (Intermediate Report, p. 13)*; that the rule of departmental seniority was discussed at the meeting with Conciliator Rogers in May, 1935 (R. p. 467, and Pansky, R. pp. 469, G. Sands, R. 675-677); that the words "and by departments," became a part of the June 15, 1935 agreement at the insistence of the management and after full discussion of same (G. Sands, R. p. 675); that the members of the committee fully realized their import (Pansky, R. p. 434).

Pansky and Moraco were members of the committee and witnesses for the Government. Therefore, there could be no bona fide dispute as to the *interpretation* of Article 5. Rather the dispute was over the failure of the employees' committee to abide by the plain language of Article 5 which the committee at all times understood. Two members of the committee admitted this, as appears from the evidence cited in support of the following exception.

Respondent's Exceptions to Intermediate Report

SECOND: Respondent excepts to the failure of the Trial Examiner to make the following findings of fact:

(a) That for about five weeks prior to August 21, 1935, a dispute existed between respondent and the employees' committee involving Article 5 of the agreement of June 15, 1935;

(b) That Article 5 of the agreement of June 15, 1935 was thoroughly discussed between respondent and the employees' committee before said agreement was entered into, and the employees' committee thoroughly understood the meaning of said Article 5;

(c) That for about five weeks prior to August 21, 1935, in numerous meetings between the respondent and the employees' committee, the latter refused to permit the respondent to give effect to the words "and by departments" in Article 5 of the agreement of June 15, 1935, and insisted that the rule of departmental seniority thereby established for respondent's plant be waived or abandoned by the respondent.

which requested findings are clearly established by the following evidence:

"Q. —They had to pay off all the new men before it could go to the three-day week; is that what you mean?

A. But what you are referring to, clause seven—I have clause five; when employees are laid off, the seniority rule should rule.

Q. You haven't read it all.

A. The committee consented to that and the company added 'and by departments.'

Q. The committee added?

A. And the company added 'by the departments.'

Q. The committee didn't like that clause 'and by departments.'?

A. There was a lot of discussion about it."

(Moraco, Record 309)

And again:

"Q. The committee was in favor of it. Let us carry that into this situation. They wanted to build up the machine shop in numbers and you have just told us that what your committee wanted,

Respondent's Exceptions to Intermediate Report

machine shop should be laid off, and men, old men in other departments, come to the machine shop; you have just told us that, haven't you?

A. Yes.

Q. That would be against that rule, wouldn't it? Let us be fair.

A. When employees are laid off, seniority rights shall rule.

Q. Go ahead.

A. That is as far as I will go."

(Moraco, Record 310)

"Q. What is your meaning of that clause?

A. When they are laid off, all the new men, they should lay them off according to seniority rights, that would be when they are hired; wouldn't it?

Q. In other words, that that should prevail throughout the shop rather than in departments; that is your interpretation, isn't it?

A. Exactly.

Q. Illustrated by this, if it is necessary to discharge some men in your department, let us say, that were old men, those men should have the right to go up in the machine shop in place of some newer employees there?

A. They always did.

Q. That is your interpretation of it; isn't that right?

A. Yes.

Q. You just nodded; is that right?

A. Yes; that's right.

Q. And that was the position of your committee; wasn't it?

A. That's right.

Q. That dispute was going on even before you left on August 2nd or 3rd; isn't that right?

A. Exactly."

(Moraco, Record 311)

"Q. It would be your position, then, if you were laid off in the shipping department on account of lack of work and you were an old man?

A. That's right.

Q. And there were some new employees in the machine shop, that you should be replacing a new employee in the machine shop?

A. That's right.

Respondent's Exceptions to Intermediate Report

Q. That's right. The management said that would not work; didn't they?

A. The management said it was all right.

Q. They tried it out for a while; didn't they?

A. They certainly did.

Q. They tried that out?

Trial Examiner Danaceau: He said yes.

Q. (By Mr. Stanley). And then the management said it didn't work, didn't they?

A. Well, they discussed about it. They said—

Q. I know. It came back to the committee as far as they were concerned they thought that was not an efficient way to run the shop; didn't they?

A. That is what they thought, yes.

Q. They tried it out for a matter of several weeks; didn't they?

A. About that.

Q. And then they called the committee together again and they said they didn't want to do that any more; isn't that right?

A. Well, they said they didn't like it.

Q. The management claimed all the time that that was contrary to the contract anyhow; didn't they, in your talk with them, and you claimed that was in accordance with your contract; isn't that right?

(said?)

(said?)

A. Well, one side it was and the other side it was not.

Q. Well, just what do you mean by that? Let us put one question at a time. The management claimed it was not in accordance with the contract?

A. They said when employees were laid off, seniority rights would rule. It would work all right so far. Then they added 'by departments' and it didn't work then. It didn't work two ways.

Q. The management said 'by departments'; that would be seniority in the department and that is what the management said. I am not asking you what your opinion is but what the management said?

A. That is what the management said."

(Moraco, Record 312, 313, 314.)

"Q. You took it back to the men. Then you came back to the management and what did you

Respondent's Exceptions to Intermediate Report

A. Yes; I told them that the men decided that the lower priced men being off, it was not fair to them to be off with the lower priced men working.

Q. He shut down for a couple of weeks?

A. He could shut down for a couple of weeks if he preferred it, but he could not lay off the older men first."

(Pansky, 452.)

Pansky, a member of the committee, when interrogated concerning his understanding of Article 5, testified as follows:

"Q. Not to be shifted from one department to another, but each department to be built up by men who had seniority rights; that is what you thought?

A. Yes."

(Pansky, 434.)

That the matter of shifting from department to department was thoroughly discussed before the contract was entered into, is evidenced by Pansky's testimony on pages 467 and 469, as well as by Garry Sands' recital of negotiations with the committee preliminary to the agreement of June 15, 1935 (R. pp. 675, 676, 677).

THIRD: Respondent excepts to the following finding of fact:

Even after the agreement of June 15, 1935, remembering that Article 5 in said agreement was the result of negotiations due to differences of opinion between the management and the men, *the same practice prevailed.* (P. 14)

on the ground that said finding is not sustained by the evidence and is contrary to the evidence. Our objection here is to the words "the same practice prevailed."

All the evidence tends to prove that, whereas the company had strenuously objected to shifting men from department to department during the negotiations leading up to the agreement of June 15, 1935, and as a result thereof Article 5 in its present form was incorporated into the contract, the respondent nevertheless again "tried out" its previous practice of shifting men from department to department after the agreement of June 15, 1935 was made. It is only reasonable to conclude that the respondent did this be-

Respondent's Exceptions to Intermediate Report

it waive the words "and by departments" in Article 5. The Examiner's finding tends to indicate that the respondent made no attempt to operate under any other policy, and to this finding we therefore object because it is not sustained by the evidence. (Moraco, R. pp. 312-314).

FOURTH: Respondent excepts to the following finding of fact:

"However, during the latter part of July and the early part of August, 1935, the management was dissatisfied with this practice." (P. 14)

on the ground that the said finding is not sustained by the evidence and is contrary to the evidence, all of which is to the effect that respondent's dissatisfaction with shifting men from department to department existed prior to the May, 1935 strike (Compl. Witn. Moraco, R. 313, G. Sands, R. 676); was discussed at the meeting with Conciliator Rogers in May, 1935 and again on June 15th, and that said dissatisfaction was the cause of respondent's insistence that Article 5 in the agreement of June 15, 1935, be in its present form (G. Sands, R. 675, 676).

FIFTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact:

That respondent's dissatisfaction with its previous policy of transferring men from slack departments to busier departments existed prior to June 15, 1935, and was, at least, the major reason for its insistence that Articles 5 and 6 in the agreement of June 15, 1935 be in their present form.

which requested finding is clearly established by the following evidence: See the testimony of G. Sands quoted under the Sixth Exception.

SIXTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact:

That even after the agreement of June 15, 1935, in an endeavor to keep peace, the respondent again "tried out" transferring men from slack departments to departments which were busier, and was dissatisfied with the results thereby obtained.

which requested finding is clearly established by the following evidence:

Respondent's Exceptions to Intermediate Report

"A. Well, I was practically forced to do that after the July shutdown." (G. Sands, R. 682)

"A. It didn't work out." (G. Sands, R. 683)

"A. I found from my experience that the plant could not run economically as in the past by switching one man from another department and putting him in another, so when the strike came about and the negotiations came up for settlement I said, 'Now, boys, we are here and there is one thing we have got to get straightened out and that is this subject of running by departments, the seniority rule. We are all together here in the meeting and let us sign up an agreement. We understand each other, no haggling, no monkeying around in the future.' Before the strike there was always arguments, who was to run the department, who was to run it and how it was to be run; a continual harangue, and at this meeting we were to put it down in black and white just how the shop is going to operate, and I was instrumental in bringing that to a head, to try to stop any further cause of trouble or strife, and I wanted the plant to operate so there wouldn't be any haranguing, and I at that meeting wanted it run by departments and they acquiesced and signed and everything was running by departments." (G. Sands, R. 676)

"Q. They tried it out for a matter of several weeks; didn't they?

A. About that." (Compl. Witn. Moraco, R. 313)

"Q. Did you discuss it before you went back, before the management tried it out?

A. Yes, sure. * * *

Q. On the 15th of June?

A. Yes." (Compl. Witn. Moraco, R. 319)

After the coil room was shut down in the summer of 1935, Farrell a witness for complainants, testified:

"A. Most of them, I believe, were sent to the storage room.

Q. And anywhere else?

A. I know there was some down in the tin shop and I believe there was one man sent to the machine shop and took this one man I am referring to, to the machine shop." (R. p. 359)

Stanley Linski was one of those shifted from depart-

Respondent's Exceptions to Intermediate Report

ment to department, both before and after the strike. (Compl. Witn. Linski, R. 405).

Concerning the dissatisfaction expressed by the management, see testimony of complainant's witness, Pansky (R. 443).

SEVENTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact:

That shortly after June 17, 1935, respondent prepared a classification of its employees by departments and posted same on the bulletin board in its plant, whereon was listed the names of the employees and the names of the respective departments in which they were classified, and that said classification remained posted until August 21, 1935, and thereafter.

which is clearly established by the following evidence: (See testimony of H. Sands, R. 544, 545, and G. Sands, R. 680 and 681.)

EIGHTH: Respondent excepts to the following finding of fact:

"On the other hand, the employees took the position that the older men had had experience in the machine shop department, some more, and some less, that they were able to do the work efficiently, that the management was attempting to supplant the older men who, by reason of their long services, were higher priced, and that the management was really attempting to replace old M.E.S.A. workers with new workers who were or would be members of a rival A. F. of L. union favored by the management." (P. 14)

The italic portion of this finding is not a correct statement of the employees' position as it appears in the evidence. The employees complained because the management would not transfer the "old" employees with high rates of pay to jobs in other departments, chiefly in the machine shop, paying low rates, and pay the "old" employees their high rates, but the evidence discloses no charge by the employees' committee to the effect that respondent was attempting to get rid of the old M.E.S.A. workers, or that respondent was favoring any rival A. F. of L. union and trying to get members

Respondent's Exceptions to Intermediate Report

at no time was the A. F. of L. union mentioned in the meetings between respondent and the employees' committee. (See testimony of complainant's witness, Pansky, R. 445, 446).

NINTH: Respondent excepts to the following finding of fact:

"The employees pointed to a number of old men who had been laid off and who had had experience in the machine shop and wanted these old men returned to work in the machine shop before any new men were hired, and that such old men from other departments and with machine shop experience who were able to do such work in the machine shop, should, if there is no work in the other departments, be put in the machine shop department and newer men from the machine shop department laid off instead." (P. 15)

on the ground that said finding is not sustained by the evidence and is contrary to the evidence. There is no evidence that the employees "pointed to a number of old men."

"Q. Did you have any talk with the management with reference to any individual cases?

A. No."

(See testimony of Pansky, R. 466)

All the evidence is that the discussion was concerning the principle of shifting men from department to department.

TENTH: Respondent excepts to the following finding of fact:

"At this time the men also objected to the further increase and build-up of the machine shop department and the closing down of other departments on the ground that there was an ample supply of parts." (P. 15)

on the ground that the italic portion of said finding is not sustained by any evidence. There is no evidence to the effect that the employees objected to the closing down of other departments on any ground. The employees admit there was nothing to do in these departments.

Respondent's Exceptions to Intermediate Report

ELEVENTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact:

That in the dispute prior to August 21, 1935, the employees took the position that "There are some men, members of the old twenty-nine, who are either out of work or about to go out of work because of slackness in other departments in which they worked, and we want them moved over into the machine shop in preference to calling back those men who formerly worked in the machine shop but were newer men."

on the ground that said requested finding is clearly established by the evidence. (See testimony of complainant's witness, Pansky, R. 443 and 449, and complainant's witness, Moraco, R. 311 and 312).

TWELFTH: Respondent excepts to the following finding of fact:

"About the middle of August the men were given the alternative of a temporary build-up and increase in the machine shop department with a temporary slow-down and shutdown in other departments on the one hand, and a temporary complete shutdown of the plant on the other, and were asked to report to the management after the shop committee had consulted with the men which of these alternatives they preferred. These alternatives were given to the employees on or about August 19, 1935." (P. 15)

on the ground that said finding is not sustained by the evidence and is contrary to the evidence. This finding carries the impression that the respondent was willing that either of the respective alternatives be employed and that it freely offered the employees their choice. Nothing can be further from the picture painted by the evidence. The evidence is that after more than five (5) weeks of negotiation, the respondent on August 19, 1935, in effect said to its employees:

"For five weeks we have been negotiating with you, requesting that you permit us to operate our shop in accordance with Article 5 of our contract with you. We are not getting anywhere and we can't go on any longer. If we can't operate the machine shop alone for a while in accordance with Article 5 of the agreement, which we want to do,

Respondent's Exceptions to Intermediate Report

we will have to shut down. You go back to your constituents and see if you can find a solution and see what they want to do."

(See citations to the Record under the Thirteenth Exception.)

THIRTEENTH: Respondent excepts to the failure of the Trial Examiner to make the following findings of fact, which are clearly established by the evidence:

(a) That on August 19, 1935, at a meeting between respondent and the employees' committee, the inefficiency of the then existing three days per week schedule at respondent's plant was admitted by the employees' committee.

(b) That on August 19, 1935, at a meeting between respondent and the employees' committee, the respondent informed said committee that it could not continue operating its plant as it was then being operated, that is, without applying Article 5 of the agreement of June 15, 1935.

(c) That on August 19, 1935, at a meeting between respondent and the employees' committee, the respondent insisted to said committee that it be permitted to operate its machine shop in accordance with Article 5 of the agreement of June 15, 1935.

(d) That on August 19, 1935, at a meeting between respondent and the employees' committee, the respondent suggested that the said committee go back and talk to the men and see if they could arrive at a solution of the dispute.

(See testimony of complainant's witness, Pansky, R. 451, 452; H. Sands, R. 538, 539, 540 and 541; G. Sands, R. 682).

FOURTEENTH: Respondent excepts to the following finding of fact:

"A few days later, on August 21, 1935, the committee again met with the management and chose the alternative which provided for the temporary complete shutdown of the plant." (P. 15)

on the ground that said finding is not sustained by the evidence and is contrary to the evidence. There was no

Respondent's Exceptions to Intermediate Report

choice of an alternative by the committee at the meeting of August 21, 1935. What the committee did was to stick to the position it had been maintaining for five (5) weeks, giving the respondent the choice of either acceding to the committee's demands, which were at variance with the contract, or closing its plant. What the committee did was to advise respondent that, rather than permit respondent to run by departments in accordance with Article 5, it should shut down its plant.

"He could shut down for a couple of weeks if he preferred it, but he couldn't lay off the older men first."

(Compl. With. Pansky, R. 452)

FIFTEENTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That on August 21, 1935, at a meeting between respondent and the employees' committee, the latter, having previously conferred with its constituents, stated substantially that the committee could suggest no solution to the dispute and that respondent should temporarily close its plant.

(See testimony of Pansky, R. 452; H. Sands, R. 542, 543; and G. Sands, R. 683, 684.)

SIXTEENTH: Respondent excepts to the following finding of fact:

"As a result of the difficulties between the management and the employees during the latter part of May and the early part of June as hereinbefore set forth *and the current shutdown*, orders had piled up and respondent was unable to make shipment of the said orders until an agreement was reached and the employees returned to production."
(P. 19)

on the ground that the inclusion of the words "and the current shutdown" in said finding is not sustained by any evidence and is contrary to the evidence. There is no evidence of any pile-up of orders or inability on the part of the respondent to make shipments after August 21, 1935. On the other hand, there is positive evidence that the contrary was true. (H. Sands, 579; G. Sands, 705, 706.) We submit that the words "and the current shutdown" should be stricken from this finding. If

Respondent's Exceptions to Intermediate Report

this be done, the finding will not be at variance with the Trial Examiner's finding in the next paragraph on this subject.

SEVENTEENTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That the lay-off in the early part of July, 1935, of all of the employees in the tank heater department, except the foreman, occurred after a conference between the respondent and the employees involved, which was in turn after the respondent and the employees' committee had failed to agree on said lay-off.

(See testimony of complainant's witness, Moraco, R. 294, 295; H. Sands, R. 526.)

EIGHTEENTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That before respondent put its plant on three days per week in August, 1935, it laid off all but the 31 "old" employees in accordance with the provisions of the agreement of June 15, 1935, although at the time it wanted to operate its machine shop full time. This was at the instance of the committee.

(See testimony of G. Sands, R. 678, 679.)

NINETEENTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That of the original 31 employees with whom respondent entered into an agreement in May, 1934, only six were regularly employed in the machine shop at that time, their names being Henry Meyer, Paul Brandt, Tony Avon, Ed. Stack, Charles Dusek, and John Greeley, and of said six only four, Henry Meyer, Ed. Stack, John Greeley, and Charles Dusek had regular employment in the machine shop after that date.

(See testimony of H. Sands, R. 543.)

TWENTIETH: Respondent excepts to the failure of

Respondent's Exceptions to Intermediate Report

the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That in order to operate its plant efficiently it is necessary that respondent's machine shop be thirty (30) days ahead of the remainder of its plant. It is the prime department in respondent's plant and also the bottle neck.

(See testimony of H. Sands, R. 585.)

TWENTY-FIRST: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That the employees' committee made no request for a meeting with the respondent after August 21, 1935, nor did it after that date evidence any intention to withdraw in the slightest degree from the position it had taken in reference to departmental seniority prior to that date.

Potter testified that in the telephone conversation with G. Sands on September 3, 1935, he asked for a meeting. G. Sands denied this. But the evidence is positive that the committee never asked for a meeting after August 21, 1935. (See testimony of G. Sands, R. 700, 701.)

TWENTY-SECOND: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That except for a few of the complainants who made a request to be re-employed after their places had been filled for some time in September, 1935, none of the complainants asked to be re-employed by the respondent or put back to work.

(See testimony of G. Sands, R. 707, 708.)

TWENTY-THIRD: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That the M.E.S.A. adopted a policy of suspending from its membership those of its members who went to work for respondent after September 3, 1935.

(See testimony of Rudd, the Financial Secretary of the M.E.S.A., R. 215.)

Respondent's Exceptions to Intermediate Report

TWENTY-FOURTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That preparatory to respondent's opening its machine shop on September 3, 1935, the A. F. of L. also sent telegrams to its members who had had previous employment in respondent's plant.

(See testimony of H. Sands, R. 574.)

TWENTY-FIFTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That the four complainants with whom respondent had conferences after August 21, 1935, regarding re-employment, were "key" men and that although the new wage rate offered them was below their previous rate, the respondent offered to guarantee them against any loss of time, as in previous years, so that their total earnings per year would be at least equal to their previous yearly earnings.

(See testimony of Farrell, R. 360; Dolish, R. 376, 380, 381; Linski, R. 397; Pansky, R. 458—all complainants' witnesses.)

TWENTY-SIXTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That by September 5, 1935, substantially all of the complainants had knowledge of the opening of respondent's plant.

(See testimony of Potter, R. 58.)

TWENTY-SEVENTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That after August 1, 1935, the employees' committee was looking out chiefly for the "old" men (the original thirty-one), rather than other M.E.S.A. members who had been employed by respondent prior to that date.

The committee didn't represent employees who were members of the A. F. of L. (See testimony of complainants' witness, Rudd, R. 223. See Article 7 and 18

Respondent's Exceptions to Intermediate Report

of the agreement of June 15, 1935. See testimony of complainants' witness, Pansky, R. 452.)

TWENTY-EIGHTH: Respondent excepts to the failure of the Trial Examiner to make the following findings of fact, which are clearly established by the evidence:

(a) That there is no piece work in respondent's plant, all employees being paid their respective hourly rates.

(See testimony of George Carbeck, Sr., R. 632.)

(b) That when employees were transferred to departments paying lower than their respective hourly rate, respondent had to pay them the higher rate.

"Q. Suppose a man was working in a department where it required a considerable skill and was getting eighty cents. Although he came and worked at a fifty cent job, he would still get eighty cents; is that what you mean?

A. Yes."

(See testimony of complainants' witness, Pansky, R. 472.)

TWENTY-NINTH: Respondent excepts to the failure of the Trial Examiner to make the following findings of fact, which are clearly established by the evidence:

(a) That during all of the time complainants were in respondent's employ, respondent did not interfere with, restrain, or coerce complainants in respect of their right to self-organization.

(b) That during all of the time complainants were in respondent's employ, respondent did not interfere with, restrain, or coerce complainants in respect of their right to form, join, or assist labor organizations.

(c) That during all of the time complainants were in respondent's employ, respondent did not interfere with, restrain, or coerce complainants in respect of their right to bargain collectively through representatives of their own choosing.

(d) That during all of the time complainants were in respondent's employ, respondent did not interfere with, restrain, or coerce complainants in

Respondent's Exceptions to Intermediate Report

respect of their right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(e) That during all of the time complainants were in respondent's employ, respondent did not interfere with, restrain, or coerce complainants in respect of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

There is no evidence in the record contrary to the requested findings. On the other hand, there is the following:

"Q. Now, were there any complaints then up until August 21st that you took up with the company?

A. No.

Q. Everything was fairly harmonious up to August 21st?

A. The committee handled all that. I didn't.

Q. You didn't pay any attention to it?

A. No.

Q. At any rate, there wasn't anything of importance to take you in there?

A. Nothing sufficient to take me in there."

(See testimony of complainants' witness, Potter R. 95.)

THIRTIETH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

There is no evidence that during all of the time complainants were in the respondent's employ, respondent dominated or interfered with the formation or administration of any labor organization or contributed financial or other support to it. In fact, respondent permitted the committee representing the complainants to confer with respondent's officers during working hours without loss of time or pay.

The record is silent as to any domination or interference with the formation or administration of any labor union by the respondent during said period of time.

Respondent's Exceptions to Intermediate Report

That the committee meetings were held on company time, see testimony of G. Sands, R. 701.

THIRTY-FIRST: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That during all of the time complainants were in respondent's employ, respondent did not by discrimination in regard to hire or tenure of employment, or any term or condition of employment, encourage or discourage membership in any labor organization.

This is evidenced by Article 11 of the agreement of July 15, 1935, which must have been insisted upon by the respondent and which provides for an open shop. At the same time there is no evidence of discrimination on the part of the respondent.

THIRTY-SECOND: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That during all of the time complainants were in respondent's employ, respondent bargained collectively with the committee representing the complainants.

The fact that respondent entered into two written agreements with the complainants is alone sufficient evidence of collective bargaining. However, the record is replete with meeting after meeting between respondent and the employees' committee, and during all the time the complainants were organized the respondent never refused to meet the committee; in fact, it suggested a number of committee meetings. (See testimony of G. Sands, R. 701.)

THIRTY-THIRD: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That the agreement of June 15, 1935 between respondent and its employees was prepared by the employees' committee.

(See testimony of complainants' witness, Potter, R. 90.)

Respondent's Exceptions to Intermediate Report

THIRTY-FOURTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That after June 15, 1935, during all of the time complainants were in respondent's employ, respondent always reduced its working force in accordance with the provisions of the agreement of June 15, 1935.

(See testimony of G. Sands, R. 679, 680.)

THIRTY-FIFTH: Respondent excepts to the failure of the Trial Examiner to make the following findings of fact, which are clearly established by the evidence:

That from the time respondent's employees organized in April of 1934, until they were laid off on or before August 21, 1935:

- (a) Respondent recognized their committee;
- (b) Respondent dealt with their committee;
- (c) Respondent bargained with them collectively;
- (d) Respondent negotiated the settlement of grievances with the committee;
- (e) Respondent made an honest effort to settle the dispute over departmental seniority (the application of Article 5 of the agreement of June 15, 1935) by negotiations.

(See testimony of complainants' witness Potter, R. 44-47, inc.; See testimony of G. Sands, R. 701; see testimony of complainants' witness, Moraco, R. 293-296, inc.)

"Q. There were long discussions over that; weren't there?

A. Quite a few.

Q. Yes. And they lasted for several weeks; didn't they?

A. Yes, sir." (Compl. Witn. Moraco, R. 306.)

(See testimony of H. Sands, R. 531, 533, 534, 538-543; G. Sands, R. 681-684.)

THIRTY-SIXTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That respondent's business has slack seasons every

Respondent's Exceptions to Intermediate Report

year, sometimes in August and September, sometimes in December, January and February.

(See testimony of complainants' witness, Blaha, R. 122; complainants' witness, Sweitzer, R. 176, 177; complainants' witness, Dolish, R. 386, 387.)

THIRTY-SEVENTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That the employees and their committee, in their dealings with respondent, acted upon the assumption that because there was no prohibition against a strike in their agreement with respondent, whatever their grievance, merited or unmerited, they had a right to strike.

"Q. But there was nothing in the contract which prevented the M.E.S.A. from striking as a result of that disagreement, was there?

A. No. There was nothing in any agreement that would prevent them from striking. Labor always has the right to strike.

Q. * * * You mean that in all the labor disagreements, labor has a right to strike?

A. Unless it is written in there that they haven't the right to strike. We don't have it written in there.

Q. In other words, you didn't write it into your contract; therefore, whatever may have been the grievance, merited or unmerited, you still had the right to strike?

A. Yes, certainly."

(Potter, State Chairman, R. 63.)

THIRTY-EIGHTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That during all of the time complainants were in respondent's employ, respondent fully performed all of its obligations in the agreement of June 15, 1935.

The record is replete with the history of meeting after meeting between respondent and the employees' committee. It shows that during these meetings contracts

Respondent's Exceptions to Intermediate Report

and that full freedom was afforded the employees to talk with respondent's officers over any matter with which they were concerned. In the entire record of these proceedings, there was not one charge made by a single member of the employees' committee that the respondent had violated as much as a single provision of the agreement. The conclusion is obvious.

THIRTY-NINTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That from May, 1934 until August 21, 1935, the employees' committee, in increasing amounts, more and more, insisted that they be consulted in the determination of questions properly belonging to the management for determination.

"The men would come to me every time I would want to lay off some men and I would have to have a committee meeting and try to live up to the intent and spirit of the contract. The meaning was every time you had to lay off a man you had to have a hearing before the committee. Before I did anything, I tried to live up to the contract to my utmost extent. We had a strike, had our experience with it, and I said I didn't want to have any more trouble. And then when we got to these committee meetings and I wanted to put on some more men, somebody would say, 'You've got enough stock here. You can't put on any more men.' When I wanted to lay off some men, 'You can't do this or that; you do this. You've got to take from one department to another.' That is the way it was working. It was working in such a condition I didn't know how to purchase material if I bought material. If I bought stock, I had too much stock. I was in a quandary. One man would say, 'You got too many heaters in the stock room.' It got so that I didn't know what to do. That is all. At the end they were telling me how to run my business." (G. Sands, R. 677-678.)

(See testimony of complainants' witness, Jindra, R. 776, 777, 778.)

FORTIETH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact.

Respondent's Exceptions to Intermediate Report

That during the entire period of the negotiations between respondent and the employees' committee, the latter acted arbitrarily and consulted with their constituents very infrequently.

(See the opinion of the Trial Examiner on page 21 of the Intermediate Report.)

Meyer, a witness for complainant, doesn't remember any meetings of respondent's employees alone from about June 25, 1935 to September 5, 1935. (R. 178, 179.)

Brandt, another complainant, was very indefinite in his knowledge of the terms of the settlement of the first strike. (R. 131.)

Stack's understanding of the terms of the settlement of the first strike is likewise indefinite.

"Q. The committee told you to come back?

A. Yes.

Q. Did they tell you how it was settled?

A. I don't know how it was settled; they said to go back to work the next morning.

Q. You didn't know how it was settled?

A. No.

Q. Did they say anything about the men that the company wanted to be discharged?

A. No.

Q. You didn't hear anything about that? Is that right?

A. Yes.

Q. You heard that you were to go back at different wages?

A. Yes.

Q. You came back to work Monday morning?

A. Yes, sir.

Q. You went out again?

A. We were pulled out. I don't know.

Q. Who pulled you out?

A. Potter.

Q. You don't know what you went out for?

A. No. I come to work the next morning and we was out on the street, that is all I know.

Q. You don't know anything about the reason that you were pulled out?

A. Not at the time I came to work.

Q. When did you find out?

A. After I was there a while.

Respondent's Exceptions to Intermediate Report

A. Said we shouldn't go to work.

Q. Well, what was the reason you shouldn't go to work?

A. I think they wanted more money.

• • • •

Q. How much more money?

A. I don't know."

(Stack, complainants' witness, R. 151-152.)

It is definitely established in the record that the committee called the second strike on or about June 6, 1935, because the company would not reinstate five employees and insisted that they were discharged. The foregoing quotation establishes definitely how little the constituents of the employees' committee were advised as to what was going on between them and the management.

There was no vote on the second strike which took place June 6, 1935.

"Q. You didn't have a meeting for that second strike?

A. No."

(Brandt, complainants' witness, R. 134.)

"Q. Was there a meeting of the men on or about June 3rd to 5th; by the men, I mean the employees of the Sands Manufacturing Company?

A. No, sir."

(Rudd, complainants' witness, R. 230.)

"Q. Was there a meeting?

A. No, sir.

Q. That was a discussion by the shop committee, was it not?

A. Yes, sir.

Q. And the shop committee ordered the men out?

A. Yes, sir.

Q. • • • And you were there with the shop committee?

A. Yes, sir.

Q. The shop committee consisted of how many?

A. Four men.

Q. Was there a vote?

A. No; there was no vote."

(Rudd, Complainants' witness, R. 240.)

Respondent's Exceptions to Intermediate Report

"Q. . . . Then the next morning, were the men there again?

A. Yes.

Q. And your committee were on the outside of the shop?

A. Yes.

Q. And told the men not to go in to work; is that right?

A. Yes, sir.

Q. And then the second strike occurred?

A. Yes."

(Pansky, complainants' witness, R. 426.)

Referring to the discussion between the respondent and the employees' committee concerning the men to be discharged, and indicating the lack of consultation between the committee and their constituents, Norman testified:

"Q. They didn't say anything about any objection about your coming back when they talked to you the first day, did they?

A. No, sir."

(Norman, complainants' witness, R. 343.)

FORTY-FIRST: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That Local No. 22 of the M.E.S.A., to which respondent's employees belonged, includes in its membership between three and four hundred individuals, in addition to respondent's employees.

(See testimony of Rudd, complainants' witness, R. 203, 204.)

FORTY-SECOND: Respondent excepts to the following finding of fact, and to each clause thereof:

"I find that there is insufficient evidence to establish the claims of respondent, that there was a lack of plant discipline, that foremen, who were members of the M.E.S.A., permitted inefficiency, insubordination, and a reckless disregard of employee's reasonable obligations to respondent to go unchallenged, that said foremen discriminated

Respondent's Exceptions to Intermediate Report

work of the men or the business of the respondent suffered by reason of any such attitude or activity."

on the ground that said finding is not sustained by the evidence and is contrary to the evidence as more fully appears from the evidence cited in support of the Forty-fourth Exception.

FORTY-THIRD: Respondent excepts to the failure of the Trial Examiner to make the following findings of fact, which are clearly established by the evidence:

That after the organization of complainants, there developed in increasing proportions a hostility on their parts, and on the part of their committee, toward those of respondent's employees who were not members of the M.E.S.A., which said hostility:

(a) Resulted in discrimination by complainants against non-members of the M.E.S.A.;

(b) Contributed to insubordination on the part of said employees toward foremen who were non-members of the M.E.S.A.;

(c) Contributed to a lack of efficiency on the part of respondent's employees;

(d) Adversely affected plant discipline;

(e) Would be in part responsible for respondent's losses.

(See citations to the Record in following exception.)

FORTY-FOURTH: Respondent excepts to the failure of the Trial Examiner to make the following findings of fact, which are clearly established by the evidence:

(a) That whereas George Carbeck, Sr., who prior to April, 1934, had worked in respondent's plant for nine years as toolmaker and machine shop foreman, had never had any trouble with the employees, after the organization of the complainants into the M.E.S.A., the men refused to talk or speak with him.

(See testimony of Carbeck, Sr., R. 627.)

(b) That after the organization of complainants into the M.E.S.A., complainant Farrell, while George Carbeck, Sr. was ringing the timeclock,

Respondent's Exceptions to Intermediate Report

told at least one of the other employees not to speak to the Carbecks (the father, and the son who was at the time assistant machine shop foreman) and called them a bunch of "rats."

(See testimony of Carbeck, Sr., R. 628.)

(c) That the Carbecks and other non-M.E.S.A. members ate lunch apart from the M.E.S.A. members.

(See testimony of Carbeck, Sr., R. 628; testimony of Carbeck, Jr., R. 649; and testimony of Shuman, R. 664.)

(d) That the Carbecks did not join the A. F. of L. until the summer of 1935.

(See testimony of Carbeck, Sr., R. 628, and testimony of Carbeck, Jr., R. 641.)

(e) That the Financial Secretary of Complainants announced to Carbeck, Sr., re the discharge of M.E.S.A. members: "You can't fire them; try it."

(See testimony of Carbeck, Sr., R. 631, 638.)

(f) At least one inefficient workman was passed around from department to department, and each foreman, instead of firing him, passed him on to another foreman, until he had finally made the rounds and got back to the machine shop where he started, and the foreman of the machine shop was afraid to fire him.

(See testimony of Carbeck, Sr., R. 631, 632.)

(g) That the M.E.S.A. members refused to speak to George Carbeck, Jr., the assistant foreman of the machine shop.

(See testimony of Carbeck, Jr., R. 649.)

(h) That if Carbeck, Jr. said anything to the men by way of directions or instructions, they would get nasty.

(See testimony of Carbeck, Jr., R. 654.)

(i) That when men from other departments were transferred to the machine shop, they laid down on the job.

(See testimony of Carbeck, Jr., R. 652, 653.)

Respondent's Exceptions to Intermediate Report

(j) That during the manufacture of the government order late in 1934, the members of the employees' committee, in attempting to get one of respondent's employees to join the M.E.S.A., told him that if he didn't join the M.E.S.A. he wouldn't stay there very long, and that his job was not worth anything if he didn't join the M.E.S.A.

See the following:

"Q. What did these men say?

A. Told me the M.E.S.A. was in the shop and if I didn't join the union I wouldn't stay there very long.

Q. Did they say anything further?

A. They said my job was not worth anything if I didn't join the M.E.S.A."

(Shuman, R. 664.)

(k) That the M.E.S.A. men were unfriendly to the other employees who were not members.

(See testimony of Shuman, R. 664.)

(l) That some of the newer men joined the A. F. of L. in the summer of 1935 in the hope that through organization they would be able to get seniority rights comparable to those of the 31 old men.

See the following:

"Q. When did you join the American Federation of Labor?

A. It was just before, sometime in June or July.

Q. Was it before or after the strike in the middle of the summer?

A. It was in the middle of the summer, after the strike.

Q. It was after the strike. Did any of the Sands tell you to join the A. F. of L. union?

A. No, sir.

Q. How did it come about that you joined the A. F. of L.?

A. Well, I belonged to the A. F. of L. before that, in 1933.

Q. Where did you belong then?

A. At the Dall. Then when everybody told me to join and get all the seniority rights, quite a few

Respondent's Exceptions to Intermediate Report

of the fellows thought it would be a good idea to have them join and get an opportunity to work along with the M.E.S.A.

Q. When you said that you saw they all had seniority rights, just what did you mean by that?

A. Well, they said that the older fellows were the ones that belonged to the M.E.S.A., really about thirty of them, they had worked there before; by belonging to the M.E.S.A. Union they had seniority rights, and when the lay-offs came all the new fellows would be laid off when they came to work."

(Shuman, R. 666-667.)

In spite of the fact that according to the agreement of June 15th the employees' committee represented "the employees" as well as the members of the M.E.S.A., the employees' committee did not function for the benefit of non-members.

"Q. You didn't represent them?

A. No, sir.

Q. The M.E.S.A. didn't?

A. No, sir."

(Rudd, complainants' witness, R. 223-224.)

(m) That complainants, at the time of the negotiation of the agreement of June 15, 1935, sought to compel the discharge of all non-M.E.S.A. men who were engaged in productive labor; that this included the two Carbecks, who were, respectively, the foreman and the assistant foreman of the machine shop.

See Article 16 of the agreement proposed by the union during the negotiations that led up to the agreement of June 15, 1935, which agreement contained the following:

"That George Carbeck, Sr. and George Carbeck, Jr., are discharged immediately, as well as any of their relatives." (Respondent's Exhibit 9)

(See testimony of Potter, R. 93.)

(n) That complainants, at the time of the negotiation of the agreement of June 15, 1935, did compel the discharge of two employees whom they had been authorized to represent (Cassell and

Respondent's Exceptions to Intermediate Report

Moritz) because they would not picket during the strike in May and June, 1935.

See Articles 15 and 16 of the agreement of June 15, 1935, and the testimony of Potter (R. 87) and the testimony of Rudd (R. 241, 242, 248.)

FORTY-FIFTH: Respondent excepts to the failure of the Trial Examiner to make the following findings of fact, which are clearly established by the evidence:

(a) That during the year 1933 respondent lost \$20,000;

(b) That during the year 1934 respondent lost \$40,000;

(c) That the prospects for the year 1935 were that respondent would continue to lose money.

(See testimony of G. Sands, R. 703.)

FORTY-SIXTH: Respondent excepts to the failure of the Trial Examiner to make the following findings of fact, which are clearly established by the evidence:

(a) That all of respondent's manufacturing, processing, and assembling is done in Cleveland;

(b) That all of respondent's products are packed and crated for shipment in Cleveland;

(c) That each and every complainant, while in respondent's employ, was engaged only in manufacturing, processing or assembling respondent's products, or in packing or crating for shipment respondent's products after they had been manufactured, processed, or assembled in respondent's plant.

(See testimony of G. Sands, R. 18, 705.)

FORTY-SEVENTH: Resopndent excepts to the failure of the Trial Examiner to include in his findings of fact the following:

(a) That there has existed a reasonable and honest difference of opinion regarding the meaning and interpretation of Article 5 of the agreement of June 15, 1935, and of Articles 6, 7, 10, 12 and 18.

(b) That much of the difficulty between respondent and its employees might have been averted had

Respondent's Exceptions to Intermediate Report

the said employees given greater consideration to the wishes of the management in its operation of its plant, particularly in its desire to increase production in the machine shop department during the middle of August, 1935.

which said requested findings he states as his opinions, on page 21 of his Intermediate Report, but he omits to include them in his findings of fact. Having arrived at these opinions after the hearing of all of the evidence, it is unfair that they should be excluded from his findings of fact.

FORTY-EIGHTH: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That there is no rule in force at respondent's plant against the employment of M.E.S.A. members or the members of any other labor organization.

(See testimony of H. Sands, R. 575, and testimony of G. Sands, R. 703.)

FORTY-NINTH: Respondent excepts to the failure of the Trial Examiner to make the following findings of fact, which are clearly established by the evidence:

That since the closing of the plant on August 21, 1935, and its subsequent opening on September 3, 1935 with a new force of men, although the plant was picketed during the entire month of September:

- (a) Respondent filled all its orders promptly;
- (b) There was no delay in the shipment of any of respondent's orders;
- (c) There was no interruption of deliveries to or from respondent's plant;
- (d) It had been a pleasure for respondent to operate its plant.

(For (a), see testimony of G. Sands, R. 706.)

(For (b), see testimony of H. Sands, R. 583, and testimony of G. Sands, R. 705.)

(For (c), see testimony of G. Sands, R. 705.)

(For (d), see testimony of G. Sands, R. 703.)

Respondent's Exceptions to Intermediate Report

FIFTIETH: Respondent excepts to the following finding of fact:

"I find that the said members of the M.E.S.A. were locked out and discharged by respondent on or shortly before August 21, 1935, and that they have since been refused employment by respondent for the reason that they have joined and assisted a labor organization known as the Mechanics Educational Society of America and engaged in concerted activities for the purpose of collective bargaining, and other mutual aid and protection." (P. 18)

on the ground that said finding is not sustained by the evidence and is contrary to the evidence.

We except to this finding:

1st. Because there was no lockout on or before August 21, 1935, neither were there any discharges on or before August 21, 1935. On that date the respondent had not decided how it would handle the situation created by the complainants' obstinate refusal to comply with the provisions of their agreement with the respondent. If there were a lockout and a discharge, it took place on September 3, 1935, when the respondent hired other workers to fill the positions formerly filled by complainants.

2nd. Because the evidence does not establish that the complainants have been refused employment. The uncontradicted testimony of the Financial Secretary of complainants' union is that those of its members who went to work for respondent after September 3rd were suspended from the M.E.S.A. The evidence is that the complainants never asked for their jobs; that they never receded from the position they had taken with respect to Article 5 before August 21, 1935; and that in order to compel the respondent to waive or abandon its rights under Article 5, complainants attempted to "club" the respondent into submission by picketing its plant. There was no refusal on the part of respondent to employ the complainants, for the reason that respondent opened its machine shop alone, and prior to August 21, 1935 the complainants had definitely taken the position that they would not work under those circumstances; that is, that they would not permit respondent to "run by departments."

Respondent's Exceptions to Intermediate Report

3rd. Because that part of the finding reading:

"for the reason that they have joined and assisted a labor organization known as the Mechanics Educational Society of America and engaged in concerted activities for the purpose of collective bargaining, and other mutual aid and protection."

is purely a figment of the imagination of the Trial Examiner. No fair-minded person reading the record in this case can conclude otherwise than that a dispute had existed for more than five weeks between respondent and complainants; that numerous meetings had been held by the disputants in an endeavor to settle the controversy; that the respondent's contention was strictly in accordance with the agreement; that the employees refused to permit the respondent to operate its plant in accordance with Article 5 of the agreement; and that it was because of this dispute and because of the fact that there seemed no other way of ending the difficulty that respondent opened its machine shop on September 3, 1935, and later its entire plant, with new employees. The fact that respondent's employees had joined or assisted the M.E.S.A. or engaged in concerted activities had nothing to do with it, and there is not a syllable of evidence in the record to support the Examiner's finding.

FIFTY-FIRST: Respondent excepts to the following finding of fact:

"By said lockout, discharge and refusal to employ its said employees who were members of the M.E.-S.A., respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act." (P. 18)

on the ground that said finding is not sustained by the evidence and is contrary to the evidence.

Respondent excepts to this finding for the reasons stated under the Fiftieth Exception, and for the further reason that there is no evidence that the respondent attempted to deprive its employees of any of the rights guaranteed in Section 7 of the National Labor Relations Act. On the contrary, the evidence is that the employees, while engaged in the full and free exercise of all of the rights guaranteed them by Section 7 of the Act, took the position from which they

Respondent's Exceptions to Intermediate Report

refused to recede; that that position was contrary to the plain language of the agreement between them and the respondent, and that the choice was forced upon respondent by the employees in their exercise of their rights guaranteed under Section 7 of the Act, to either accede to their demands or to do something else. The fact that the respondent did "something else" does not mean that respondent has interfered with, restrained, or coerced them in the exercise of their rights guaranteed under Section 7 of the Act. It simply means that respondent didn't agree with them. Respondent didn't have to agree with them. When respondent saw fit to affirmatively disagree with them by attempting to run its plant, they continued to exercise their rights under Section 7 by picketing respondent's plant. This very proceeding is another exercise of their rights. There is no evidence whatever tending to prove that respondent has in any way interfered with, restrained, or coerced them in the exercise of these rights. They concertedly refused to go along with respondent, and the respondent perforce went along by itself. To hold that by so doing respondent interfered with, restrained, or coerced its employees in the exercise of the rights guaranteed them under Section 7 of the Act is to hold that the employer must always accede to the demands of the employees, and is to make of the employees' committee a czar in the employer's plant in whose favor the employer must always abdicate in times of controversy.

FIFTY-SECOND: Respondent excepts to the following finding of fact:

"By said lockout, discharge and refusal to employ its said employees who were members of the M.E.S.A., respondent has discouraged membership in the labor organization known as Mechanics Educational Society of America." (P. 18)

on the ground that said finding is not sustained by the evidence and is contrary to the evidence.

We object to this finding because it is a conclusion that cannot be drawn from the evidence. There is no evidence in the record that the dispute between respondent and the employees' committee had the effect of discouraging membership in the M.E.S.A. The record is silent on the subject. It is altogether possible that by the obstinacy of the employees' committee

Respondent's Exceptions to Intermediate Report

which has apparently met with the approval of the M.E.S.A., and by the later commencement of this proceeding, the M.E.S.A. has benefited. This is not proved by the record; neither is it disproved. At any rate, the effect would be remote and indirect. The finding which is compelled by the evidence is that the actions of the employees' committee, stamped with the approval of the M.E.S.A., augmented by picketing, and the commencement of these proceedings by the M.E.S.A., rather than any act of the respondent, have been responsible for whatever discouragement of the M.E.S.A. members there has been, if any.

FIFTY-THIRD: Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, which is clearly established by the evidence:

That on August 21, 1935, respecting the matter of running by departments or the application of the rule of departmental seniority, as set forth in Article 5 of the agreement of June 15, 1935, respondent and its employees were in the position where an irreconcilable difference had created an impasse.

The evidence shows a clear-cut issue between respondent and the employees' committee involving the application by respondent of Article 5 of its agreement with its employees. The evidence also shows numerous meetings held for the purpose of "ironing out" that issue, if possible. The evidence shows a determination upon the part of respondent to "run by departments." It shows equal determination on the part of the employees' committee to refuse to abide by Article 5.

The words of Tony Moraco, a member of the committee, show the attitude of the committee even at the hearing. Interrogated concerning Article 5, he read said article as follows:

"That when employees are laid off, seniority rights shall rule."

When requested to finish the article, he said:

"That is as far as I will go." (R. 310)

Article 5 in the said agreement is as follows:

"(5) That when employees are laid off, seniority rights shall rule, and by departments."

Respondent's Exceptions to Intermediate Report

Such evidence fully establishes the fact that the position of the employees was willfully and knowingly in violation of the plain language of the agreement. It was, therefore, unlawful.

Respondent had the right to performance by the employees in accordance with the agreement. They refused that performance. However, even if there were no illegality in the position of the employees, but only a difference of opinion as to something not plainly covered by the agreement, and the respondent and the employees after much discussion had taken positions from which both refused to recede, then, since the agreement did not provide for arbitration or any other way out of the difficulty, the disputants were not required to continue their collective "arguing" (as the Examiner first referred to it on page 1 of his Intermediate Report), but it was a right of either to cut the Gordian knot and, having agreed to disagree with the other, to go on as best it could. If there ever was an irreconcilable difference spelled out by the evidence, it is spelled out in this case.

FIFTY-FOURTH: Respondent excepts to the following conclusions of the Trial Examiner:

(a) That

"(1) Respondent, by locking out, discharging, and refusing to employ the above named employees, and by interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, has engaged and is engaged in unfair labor practice affecting commerce within the meaning of Section 8, Subdivision 1, and Section 2, Subdivisions 6 and 7, of the National Labor Relations Act."

(b) That

"(2) Respondent, by locking out, discharging, and refusing to employ the above named employees, and by discouraging membership in the labor organization known as the Mechanics Educational Society of America, has engaged and is engaging in unfair labor practice affecting commerce within the meaning of Section 8, Subdivision 3, and Section 2, Subdivisions 6 and 7, of the National Labor Relations Act."

Respondent's Exceptions to Intermediate Report

on the ground that said conclusions are not sustained by the evidence and are contrary to law.

FIFTY-FIFTH: Respondent excepts to the ruling of the Trial Examiner made at the commencement of the proceeding, when he overruled respondent's motion to dismiss the complaint on the constitutional grounds set forth in respondent's answer, to-wit,

"That the National Labor Relations Act is unconstitutional and void in that it purports to authorize the National Labor Relations Board to assume jurisdiction over matters not subject to the laws of the United States of America, to-wit, the relationships existing between respondent and its employees who are engaged only in manufacturing operations and not in interstate commerce, and in that said Act controvenes the Fourth, Fifth and Tenth Amendments to the Constitution of the United States."

FIFTY-SIXTH: Resondent excepts to the rulings of the Trial Examiner when he overruled respondent's motion to dismiss the complaint made at the close of the Government's evidence and renewed at the close of all of the evidence. We desire to reserve the arguments on the law of the case until the exceptions to the findings of fact have been ruled upon.

FIFTY-SEVENTH: Respondent excepts severally to the following recommendations of the Trial Examiner:

That

"(1) Respondent cease and desist from interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, and from discouraging membership in any labor organization by discrimination in regard to tenure of employment or any term or condition of employment;

"(2) In order to effectuate the policies of the Act, respondent:

Respondent's Exceptions to Intermediate Report

(a) offer immediate and full reinstatement to their former positions to the said employees, with all rights and privileges previously enjoyed,

(b) file with the Regional Director for the Eighth Region, on or before February 1st, 1936, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements."

We likewise reserve our argument on these recommendations for the brief to be presented after the exceptions to the findings of fact have been ruled upon by the Board.

FIFTY-EIGHTH: Respondent excepts to the failure of the Trial Examiner to adopt the following conclusions of law:

(a) That the dispute between respondent and complainants has not affected commerce within the meaning of the National Labor Relations Act.

(b) That in all respects the actions of the respondent with respect to the complainants subsequent to July 5, 1935, have been within its rights.

(c) That respondent has engaged in no unfair labor practice within the meaning of Section 8 of the National Labor Relations Act.

Argument in support of these requested conclusions will appear in the brief to be filed after the exceptions to the findings of fact have been ruled upon.

WHEREFORE, respondent asks that the said Intermediate Report of the Trial Examiner be set aside and modified in accordance with respondent's exceptions set forth herein.

STANLEY & SMOYER,
Attorneys for Respondent,
The Sands Manufacturing Company.

TRANSCRIPT OF EVIDENCE

925 Guarantee Title Building, Cleveland, Ohio,
Monday, November 25, 1935.

The above-entitled matter came on for hearing, pursuant to notice, at 10 o'clock a. m.

Before: SAUL S. DANACEAU, Trial Examiner.

APPEARANCES

Nathan Witt, Attorney on behalf of the National Labor Relations Board, and

Harry L. Lodish, Regional Attorney.

Stanley & Smoyer, by *W. K. Stanley* and *Harry E. Smoyer*, Union Trust Building, Cleveland, Ohio, on behalf of The Sands Manufacturing Co.

Brooker & Brooker, by *William L. Brooker*, Standard Building, Cleveland, Ohio, on behalf of Mechanics' Educational Society of America.

PROCEEDINGS

Trial Examiner Danaceau: Gentlemen, this hearing on behalf of the Sands Manufacturing Company and the Mechanics' Educational Society of America
2 is now in session. Do the parties wish to have any opening statements?

Mr. Witt: Well, we didn't count on an opening statement, but perhaps an opening statement will be helpful to you, and if you want to, I shall make one.

Trial Examiner Danaceau: I would like to have a short statement. I instruct the Reporter not to take down the opening statements.

(Thereupon opening statements were made on behalf of the National Labor Relations Board by Messrs. Witt and Lodish, and on behalf of the respondent by Mr. Smoyer.)

Mr. Smoyer: Now, for the formal motion for the record. At this time the respondent wants to enter its objection to the introduction of any evidence in support of this claim or tending to support it on constitutional grounds, which grounds are set forth fully in the answer that has been filed by the respondent.

Trial Examiner Danaceau: Motion will be overruled. Proceed.

Mr. Smoyer: Note an exception.

Transcript of Evidence

Mr. Witt: We have no copies of this first exhibit and, consequently, we will show it to the other side.

3 Trial Examiner Danaceau: The copy of the pleadings?

Mr. Witt: I will offer that in evidence in a minute as soon as the other side sees it.

Mr. Smoyer: At this time, if the Examiner please, we want to make a motion for a separation of witnesses.

Trial Examiner Danaceau: That motion will be granted. Better wait until we call the first witness.

Mr. Witt: Well, we would like to be heard on that motion, if the Examiner please.

Trial Examiner Danaceau: Just a moment please.

Mr. Smoyer: If the Examiner please, this is quite a document and we haven't had a chance to look at it thoroughly. I don't understand what is in it.

Trial Examiner Danaceau: I understand it is a copy of the pleadings and answer and so forth.

Mr. Witt: And the designation of yourself, your Honor.

Trial Examiner Danaceau: It is nothing outside of the pleadings.

Mr. Stanley: We might say also at this time that there may be one or two things where we might want to amend in our answer. I don't know how important it may be, but I told you we could do that during the progress of the case.

Trial Examiner Danaceau: That will be satisfactory.

Mr. Witt: On behalf of the Government, I offer this as the Board's Exhibit 1, which includes all the formal papers in the case to date.

4 (The papers referred to were received in evidence and marked "Board's Exhibit No. 1.")

Trial Examiner Danaceau: You wish to be heard on the question of the separation of witnesses?

Mr. Witt: I am not finished with the exhibits. On behalf of the Government, I wish to offer Exhibit No. 2, the Board's Exhibit No. 2, an exemplified copy of the Articles of Incorporation of The Sands Manufacturing Company.

Mr. Smoyer: No objection.

(The papers referred to were received in evidence and marked "Board's Exhibit No. 2.")

Mr. Witt: On behalf of the Government, I wish to offer in evidence Board's Exhibit No. 3, an exempli-

Transcript of Evidence

fied copy of the respondent's annual report for domestic corporation for profit of the year 1935, filed with the Tax Commission of the State of Ohio.

Mr. Stanley: Mr. Witt, may we ask what particular items are here that you think are pertinent to the issues? This seems to be a report for 1934.

Mr. Witt: Yes, filed in 1935, Mr. Stanley, but that is the last tax report filed by the respondent. Now, the item that we consider important is the item on Page 2 which gives the figure of the extra-state business done by the respondent; definition of extra-state being found on Page 3.

Mr. Stanley: In other words, the exhibit is introduced—

Mr. Witt: We will bring that out.

Mr. Stanley: —only for the purpose of showing under Item 18.

5 Mr. Witt: I believe that is the number.

Mr. Stanley: Extra-state business, sixty thousand dollars.

Mr. Smoyer: That is 1934 business.

Mr. Witt: Yes; we will have a few questions about that item and, incidentally, we offer that also to show that the principal office of the respondent is in Beachwood Village, according to that tax report.

Mr. Stanley: It isn't important.

Trial Examiner Danaceau: Well, let it go in and whatever is pertinent to the issue will be considered and that which isn't will not be considered.

Mr. Smoyer: We object to it on the ground that it is on 1934 business, even before the Wagner Act was passed.

Trial Examiner Danaceau: Overruled, and it may go in for what it is worth.

Mr. Smoyer: Exception.

(The paper referred to was received in evidence and marked "Board's Exhibit No. 3.")

Mr. Witt: In relation to the segregation of witnesses, I feel that we have only one person who is classified as one of the witnesses; that party is not here. This case sets itself up as forty-eight people who are members of the M.E.S.A. and who are complaining about being laid off for discrimination, so each of them is in the same position, attempting to get their justice. They are absolutely parties in interest, and I

Transcript of Evidence

6 don't see how any one could be segregated except this one person who is not here at the present time.

Mr. Smoyer: If the Examiner please, the charge offered here as part of Board's Exhibit 1 shows the complaint is not made by the committee of the employees or by the employees themselves; it is the M.E.S.A. There is not a single employee's name on this charge. It is an entity attempting to act as an entity and this act attempts to recognize them as an entity. Any one who is not an officer of that entity has no place in here. We are not being attacked by forty-eight employees; we are being attacked by the Mechanics' Educational Society of America, so all these witnesses—

Trial Examiner Danaceau: Are all these witnesses members of the Mechanics' Society of America?

Mr. Witt: Members and former employees, whichever way the conclusion may determine.

Trial Examiner Danaceau: What distinction do you make between the members and officers of the Society?

Mr. Smoyer: For instance, if we had all our stockholders here, under the rules of evidence that we seem to apply in this State, one or two officers is all that are permitted to be in the room. Stockholders have no interest in it; that is, they are not entitled to be present as witnesses under a motion to exclude. Now, a member of the Mechanics' Educational Society is in no different position; they are stockholders of an Ohio corporation.

7 Mr. Lodish: Mr. Examiner, I think there is quite a distinction between the members of the M.E.S.A. and the stockholders of a corporation, in this particular case. Any one of the men could have brought an action on the ground that he was fired or laid off on the ground of discrimination. We could have forty-eight different charges but they brought one charge, calling it the M.E.S.A. charge instead of using forty-eight of them. It would have been silly to have made forty-eight charges based exactly on the same set of facts and the same set of circumstances, so they were all combined in one charge and resulting in one claim. If we were to segregate them, shall we send out Mr. Dusek and Mr. Jindra? They are all in exactly the same position.

Mr. Smoyer: If the Examiner please, this complaint ought to answer that question; it having been charged

Transcript of Evidence

that the Mechanics' Educational Society; it doesn't say employees; it doesn't say Jindra or Dusek.

Trial Examiner Danaceau: It is the Society and the official committee acting in its behalf.

Mr. Witt: Yes; it is our case.

Trial Examiner Danaceau: I will rule that it is a committee of officers acting in its behalf.

Mr. Witt: You mean at the present time?

Trial Examiner Danaceau: Yes.

Mr. Witt: Well, at the present time none of the people are employees and could not be acting—

8 Trial Examiner Danaceau: I meant by this Society; this Society has officers and a committee?

Mr. Witt: Yes, it has. It hasn't a committee so-called. The committee functions only when the men are employed. In addition, there was a committee of four employees, all members of the M.E.S.A., who represented the respondent's employees; they didn't sign any charge while they were working. They signed the charge as members of the M.E.S.A.

Trial Examiner Danaceau: Frankly, it is rather a puzzled question; that I know. In order to proceed, I will rule at this time that the officers and members of this committee may remain and that the individual members who wish to testify in this case, other than the officers and members of this committee, be out of the room.

Mr. Witt: That means that Mr. Potter and Mr. Rudd, who is the financial secretary of the M.E.S.A. Local, of which these are members. Mr. Jindra was an employee of the respondent company and was a member of the committee. Mr. Moraco is an employee and was a member of the committee of four. Mr. Frank Pansky was a member of the committee of four. Mr. Dusek, I believe, is not here. He was a fourth member of the committee. Those are the five that will remain in the room.

Trial Examiner Danaceau: If there is anybody else in the room who expects to testify in this case, let him find a chair in the adjoining room until he
9 is called. That refers to both sides, excepting the officers of the company.

Mr. Witt: Those people who are not going to testify will stay here.

Trial Examiner Danaceau: If you are not going to be a witness in the case, you may remain in the room.

Transcript of Evidence

It is only those who are going to be witnesses who may go out.

Mr. Smoyer: May we have the names of those who stay?

Trial Examiner Danaceau: Now, are there any members of the Society present other than the officers and members of the committee who Mr. Witt has named, whose names Mr. Witt has given us who are present?

Mr. Witt: Well, the gentleman in the rear is a father of an employee.

Trial Examiner Danaceau: Oh, I see.

Mr. Witt: He wanted the names of these people.

Mr. Smoyer: I would like to get acquainted with them.

Mr. Witt: This is Mr. Harry Potter, State Chairman of the M.E.S.A. What is your local number?

Mr. Potter: Twenty-two.

Mr. Witt: This is Mr. Charles Rudd. This man over here, he is the Financial Secretary of Local Twenty-two of the M.E.S.A., Local Twenty-two being the Local.

Mr. Smoyer: All right.

Mr. Witt: Mr. Tony Moraco, he is an employee and member of the committee of four. Mr. Lada Jindra, an employee and member of the committee of four.

10 Mr. Frank Pansky, an employee and member of the committee of four.

Mr. Smoyer: All right.

Mr. Witt: We will call Mr. Garry Sands, if the Examiner please. Mr. Examiner, before I forget, I have just given you a copy of the stipulation and we will ask counsel for the respondent to read it into the record at this time.

Trial Examiner Danaceau: May I suggest that due to the fact we have copies, and in order to save time, that we hand a copy to the Reporter and consider it as being read into the record.

Mr. Stanley: Let the record show that Mr. Sands was subpoenaed with a subpoena duces tecum, and in compliance with that, a portion of that is what we have stipulated; is that true?

Mr. Witt: Yes; let the record show. I was going to bring that out in the examination, but the record will show that at this time.

Trial Examiner Danaceau: The record may so show that Respondent's Exhibit No. 1 is a stipulation in response to a subpoena duces tecum on Mr. Garry

Testimony of Garry Sands

Sands, Secretary and Treasurer of The Sands Manufacturing Company.

(The paper referred to was received in evidence and marked "Respondent's Exhibit No. 1.")

GARRY SANDS,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Witt). Mr. Sands, you have given your name and address to the Reporter?

A. Garry Sands. Home address?

Trial Examiner Danaceau: Yes, home address.

The Witness: 2611 East Overlook.

Trial Examiner Danaceau: That is in Cleveland Heights, I take it?

The Witness: Yes.

Q. (By Mr. Witt). Mr. Sands, are you an officer of The Sands Manufacturing Company?

A. Yes, sir.

Q. What official position do you hold with the company?

A. Secretary and Treasurer.

Q. Will you tell us, Mr. Sands, who are the other officers of the company?

A. (No answer).

Q. Who is President?

A. L. Sands.

Q. Who is Vice-President?

A. J. M. Sands.

Q. Are there any other officers of the corporation?

A. No, sir.

Q. Will you tell us who your superintendent is?

A. H. J. Sands.

11a Q. H. J. Sands; H. standing for Hilliard?

A. Yes, sir.

Q. Will you tell us what other salaried officials are in the company, supervisory officials?

A. A. H. Hamilton.

Q. His position is?

A. Chief Engineer.

Q. Chief Engineer. Any others?

A. Our shipping clerk is assistant production man.

Q. Assistant production man?

Testimony of Garry Sands

A. Yes.

Q. And he is on a salary?

A. No; he is not on a salary.

Q. Well, how do you pay him?

A. Hourly.

Q. You pay him on an hourly basis?

A. Yes. Ed McKiernan.

Q. Ed McKiernan. Have you any other officials on a salary basis?

A. No.

Q. Does Mr. George Carbeck, Junior work for the company?

A. Yes, sir.

Q. He is on a salary?

A. No.

Q. He is not on a salary?

12 A. No, sir.

Q. Mr. McKiernan have a right to hire and fire?

A. In his department, yes.

Q. He has a right to hire and fire for his department?

A. Yes.

Q. Has Mr. George Carbeck, Junior a right to hire and fire—I withdraw that question please. Is George Carbeck, Junior, a foreman?

A. Yes, sir.

Q. In what department of the plant?

A. Machine shop.

Q. As foreman of the machine shop, does George Carbeck, Junior, have the right to hire and fire?

A. He has a right to, yes, I would say so.

Q. And there was no other salaried officials on the payroll of the company aside from those you have already named?

A. That's right.

Q. Now, Mr. Sands, will you give us a list of the departments in the plant, beginning with the machine shop?

A. Coil Room.

Q. Well, if you please, begin with the machine shop. You have a machine shop in the plant? That is a distinctive part?

A. Yes.

Q. Is that a maintenance or production department?

A. It is a production department.

13 Q. And the next department?

A. Well, I answered you and you stopped me.

Testimony of Garry Sands

Q. The next department is what, the coil department?

A. The coil department.

Q. What are the others?

A. The automatic department.

Q. The automatic department which is sometimes called the instantaneous department?

A. That's right. The storage department.

Q. The storage department?

A. The shipping room. Have I mentioned the storage department?

Q. Yes.

A. The tank heater and the assembly department.

Q. Is that all?

A. I guess that is all.

Q. Have you a sheet metal department?

A. I beg your pardon, a sheet metal department.

Q. You have a stock room?

A. Yes, we have.

Q. You have a stock room?

A. Yes.

Q. You have a tool room, Mr. Sands?

A. I have a tool room.

14 Mr. Witt: If the Examiner please, for convenience sake I will refer to this stipulation which is already in evidence as the stipulation, which is the only one in evidence.

Q. (By Mr. Witt). Mr. Sands, does your company have a branch plant in Canada?

A. Yes, sir.

Q. It has a branch plant in Canada?

A. No, sir; we have no branch plant in Canada.

Q. Have you any relations, financial or otherwise, with any company in Canada, the name being similar to yours?

A. I have, personally.

Q. The name is what?

A. The Sands Heater Company.

Q. The Sands Heater Company, Limited, of Canada?

A. Yes.

Q. What is the location of that plant, Mr. Sands?

A. In Hamilton, Ontario.

Q. During the current year, that is during the year 1935, did the Sands Manufacturing Company, the respondent in this case, have any relations with the Sands Heater Company, Limited, of Canada?

Testimony of Garry Sands

Mr. Smoyer: Will the Attorney please say what he means by relationship?

Mr. Witt: Withdraw that.

Q. (By Mr. Witt). During the course of this year, did the Sands Heater Company of Ohio ship
15 any materials of any kind to the Sands Heater Company of Canada?

A. It might be possible.

Mr. Lodish: Mr. Examiner, there is some gentleman who entered and I wonder if he is on the respondent's side of the case, whether he is a witness.

Trial Examiner Danaceau: What are you?

A Voice: I am the Vice-President.

Trial Examiner Danaceau: I see some other people who have entered, and may I advise you that if you expect to be a witness on one side or the other, you will have to step out in the adjoining room until your names are called.

Mr. Witt: Read the last question.

(Last question read by the Reporter.)

Q. You don't know of your own knowledge whether the Sands Heater Company of Ohio shipped any materials of any kind to the Sands Heater Company of Canada?

A. It might be possible.

Q. Would your books show if any such shipments were made?

Mr. Stanley: Mr. Examiner, there is no question of foreign commerce raised by this complaint. That is the reason the witness is not familiar with that. The petition reads interstate business; that is all.

Trial Examiner Danaceau: The question requires a yes or no answer.

Mr. Witt: If the witness doesn't know, he
16 doesn't know.

Trial Examiner Danaceau: He should say so.

Q. (By Mr. Witt). Mr. Sands, do you know or don't you know?

A. No.

Q. You don't know?

A. No.

Q. Would the books of the respondent company show if that were the case?

A. They would.

Q. They would.

Mr. Witt: Mr. Examiner, on behalf of the Govern-

Testimony of Garry Sands

ment I wish to move at this time that the respondent produce from its books an account of shipments made to the Sands Heater Company of Canada and shipments received from the Sands Heater Company of Canada.

Mr. Stanley: For what period?

Mr. Witt: From the period of January 1, 1935, through October 31st, 1935.

Trial Examiner Danaceau: Now, in order to save a lot of time of both parties, let the witness get the information necessary.

Mr. Stanley: Whatever the Examiner thinks is pertinent to this, we will get.

Trial Examiner Danaceau: A simple statement without bringing in the books.

Mr. Stanley: Yes.

17 Q. (By Mr. Witt). Mr. Sands, I show you Board's Exhibit 3, which purports to be the annual report of domestic corporations for profit, filed by the respondent in 1935 for the year 1934. I show you Item Eighteen reading as follows: "Amount of extra-state business done during same period—" same period we find to be the last preceding annual accounting period. Can you tell us whether that item represents shipments made from the plant and maintained by the Sands Heater Company, Limited of Canada?

Mr. Smoyer: Mr. Examiner, please, we object to that. It is 1934 business and hasn't anything to do with 1935. The Wagner Act became effective July 5th, 1935, this year. How could it be competent?

Trial Examiner Danaceau: I take it that it being the last report leading up to the present business. So far as it has a bearing, it may be considered; not in any other way.

Mr. Witt: Will you read that question, please?

(Last question read by the Reporter.)

A. I would have to find out from the auditor where he got it from.

Q. (By Mr. Witt). Mr. Sands, I will show you Board's Exhibit No. 3, on Page Three, the definition of extra-state business, reading as follows: "Extra-state business includes sales made to or business done with persons outside of Ohio from a plant or warehouse maintained by the corporation outside of Ohio." Does the Sands Manufacturing Com-

18

Testimony of Garry Sands

A. It operates warehouses, no plants.

Q. It operates warehouses?

A. We don't operate warehouses, no, sir.

Q. Who operates warehouses?

A. Public warehouses.

Q. Where are those warehouses located?

A. Different parts of the country.

Q. And the Sands Manufacturing Company has no leases or warehouses outside of the State of Ohio?

A. No, sir.

Q. The warehouses referred to are all public warehouses?

A. What is the question?

(Last question read by the Reporter.)

A. Yes.

Q. And they are all warehouses to which the company ships on consignment?

A. Warehouses.

Q. Will you explain that, Mr. Sands, please?

A. Well, you ship heaters to a public warehouse and an order comes in and it is shipped from the warehouse.

Mr. Witt: Will you read the answer please?

(Last answer read by the Reporter.)

Q. When the heaters are in the warehouses to
19 which they are shipped, they are in the warehouses there under the control of The Sands Manufacturing Company of Ohio?

A. That's right.

Q. Pending receipt of an order?

A. That's right.

Q. Mr. Sands, in the stipulation I will show you an item, which is Item Five: "The following is a true and correct list of its representatives in its territory and commission paid to them by respondent during the period January 1st, 1935 to October 31st, 1935." You paid all these representatives by commission?

A. I take it all except one.

Q. And that one exception is who?

A. Collins.

Q. Collins. In what city and state?

A. Jersey.

Q. Jersey City, the State of New Jersey?

A. Yes, New Jersey.

Q. Is it Orange, New Jersey?

A. (No answer).

Testimony of Garry Sands

Q. Mr. Collins represents the respondent in the State of New Jersey?

A. In part of the State of New Jersey.

Q. Part of the State of New Jersey. You pay him a salary?

20 A. Yes, sir.

Q. The others you pay commission?

A. That's right.

Q. All the same rate of commission or different rates of commission?

A. Similar.

Q. Similar. Can you tell us what that rate of commission is?

Mr. Smoyer: I object.

Trial Examiner Danaceau: The objection is sustained.

Mr. Witt: Exception.

Q. Mr. Sands, in its manufacturing operations, the company uses galvanized iron nipples?

A. Yes, sir.

Q. Are those nipples obtained by the company in the State of Ohio or outside of the State of Ohio?

A. Some obtained in Ohio and some outside of the State.

Q. Some outside of Ohio. Will you tell us the name of the company outside of the State of Ohio?

Mr. Smoyer: I object.

Mr. Witt: I asked from whom the respondent buys galvanized nipples.

Mr. Smoyer: I object. How can that be material?

Trial Examiner Danaceau: It is all to show that the company is engaged in interstate commerce.

Mr. Smoyer: Why should he know whom we deal with?

21 Trial Examiner Danaceau: The particular cross examination is to see whether the figures and the names are correct and so forth, and for that reason I will permit the answer.

Mr. Smoyer: Exception.

Mr. Witt: Read the question.

(Last question read by the Reporter.)

A. Iriquois nipple.

Q. And they are located where, Mr. Sands?

A. Buffalo.

Q. Buffalo, New York. Mr. Sands, I show you on the stipulation Item One of Page One, wherein is listed

Testimony of Garry Sands

terial, sheet iron, steel tanks, tubing, packing material. Which item there would show galvanized nipples?

A. Miscellaneous material.

Q. Miscellaneous material. Mr. Sands, can you tell us from what state the respondent receives its packing crates, the crates which it uses for packing heaters prior to the shipments?

A. This year we bought the major portion of them right locally in Cleveland. It might be possible we bought some outside this year, but I am not sure.

Q. If you bought outside, what state would you buy it from, West Virginia?

A. I don't know whether, offhand—I think it is in Minnesota. Might be in the south; I don't remember.

Q. Which item listed in Paragraph One in the
22 stipulation includes packing crates?

A. Packing material.

Q. Packing material. And the stipulation states that packing materials are received from the states of Ohio and Virginia?

A. That must be so.

Q. Would you say that Virginia is the state that you get your packing crates from?

A. Yes.

Q. Mr. Sands, the company uses a considerable amount of paint in its manufacturing operation?

A. Paint?

Q. Paint.

A. Yes, sir.

Q. Will you tell us which item in Paragraph One of the stipulation includes paint?

A. Miscellaneous materials.

Q. Miscellaneous materials. And you get the bulk of that outside of the State of Ohio, New York, say?

A. Get some of it.

Q. Some of it. Would you say you get the bulk of it?

A. I am not familiar with that.

Q. Mr. Sands, I will show you on this stipulation Paragraph Number Six on the last page of the stipulation, reading as follows: "The respondent during the
23 period January 1st, 1935 to October 31, 1935, made disbursements for advertising as follows:

Schonberg Printing Company of Ohio, Mugler Engraving and Color Plate Company of Ohio, eight thousand seven hundred and fifty dollars and forty-eight cents." Will you tell us, Mr. Sands, what was

Testimony of Garry Sands

the nature of the work done by these companies for The Sands Manufacturing Company? The Schonberg Printing Company did printing work for The Sands Manufacturing Company?

A. That's right.

Q. What kind of printing work?

A. Office forms and folders.

Q. Folders?

A. Folders.

Q. Advertising folders?

A. Advertising folders.

Q. Those folders engraved by the Mugler Engraving and Color Plate Company?

A. Yes, some of them.

Q. Were those folders distributed by The Sands Manufacturing Company all over the country?

A. Yes, sir.

Q. Did either the Schonberg Printing Company or the Mugler Engraving and Color Plate Company engrave other advertising items or material distributed by The Sands Manufacturing Company besides those folders?

24 A. My direction cards, things like that.

Q. Direction cards?

A. Yes.

Q. And they were sent all over the country on the heaters?

A. On the heaters.

Q. Did those direction cards include any advertising material?

A. I don't think so.

Q. Mr. Sands, can you tell us how many employees The Sands Manufacturing Company had on its payroll last week, at the time of the last payroll?

A. I think there were fifty.

Q. You think there were fifty.

Mr. Witt: Now, off the record, Mr. Examiner.

Trial Examiner Danaceau: We will have a recess of about ten minutes.

(Recess had.)

Mr. Witt: Now, this will be in the form of a statement on behalf of the Government. I have before me a summary of the payrolls of the company for the period from June 17th to date. The significance of

Testimony of Garry Sands

time that the plant operated after the strikes in May and June. Now, hereafter, for convenience, we will refer to this as the payroll summary. We have added certain figures on here, subject to check by yourself and counsel for the respondent. We have the following

25 totals for certain dates on which we happen to be interested. The payroll summary shows that on June 22nd, which is the first payroll date after June 17, there were eighty-four employees, all included in this list. On July 13, the payroll summary shows there were seventy employees and the significance of that date being the date just prior to the wholesale layoffs later in July and August. The payroll summary shows that during the week of October 19th there were sixty-one employees, the significance of that date being that it was during that week that the respondent company reached its peak after operations were resumed and after Labor Day, and the payroll summary shows the last payroll dated November 23rd, that there were forty-nine employees.

Trial Examiner Danaceau: I suggest that you put it in this way, that this is the payroll summary of the production employees and has been produced by the respondent at the request of the government.

Mr. Witt: In response to a subpoena duces tecum.

Trial Examiner Danaceau: In response to a subpoena duces tecum.

Mr. Witt: And for convenience it will later be referred to as the production payroll.

Trial Examiner Danaceau: By the way, also mark that Respondent's Exhibit No. 2, for the purpose of identification.

(Conversation had off the record.)

(The paper above referred to was received in evidence and marked Respondent's Exhibit No. 2,
26 Witness Sands.)

Trial Examiner Danaceau: Proceed.

GARRY SANDS,

recalled as a witness for the National Labor Relations Board, was further examined and testified as follows:

Testimony of Garry Sands

DIRECT EXAMINATION

Q. (By Mr. Witt). Mr. Sands, the name of Edward McKiernan does not appear on this production payroll, does it?

A. No, sir.

Q. The reason being what, Mr. Sands?

A. He is not production; classified as office.

Q. He is not classified as production?

A. He does a lot of clerical work; put him in the office.

Q. You are sure he is not paid on a salary basis?

A. I am pretty sure.

Q. You cannot say positively one way or the other?

A. No; I can't.

Q. Does this list include the name of George Carbeck, Junior?

A. Yes, sir.

Q. Of course, the list speaks for itself. I want to save time. It does, Mr. Sands?

A. Yes.

Q. Does this list include the name of the chief engineer, Mr. Hamilton?

A. No, sir.

Q. He is not classified as production?

A. No, sir.

27 Q. Does the name of Millwright?

A. No, Millwright.

Q. Does this list contain the name of the porter?

A. It is not included.

Q. Because the porter is not classified as production?

A. Yes.

Q. This list does not include the name of the messenger boy, Mr. Sands?

A. I don't see any messenger boy.

Q. What was the name of the messenger boy, Mr. Sands?

A. (No answer.)

Q. What was the name of the messenger boy employed by the company during the week of June 22nd; you don't remember?

A. I don't remember.

Q. What is the name of the messenger boy employed by the company today?

A. I don't remember.

Q. But I think the list will speak for itself on the messenger boy. Does this list name the names of the firemen or fireman?

Testimony of Garry Sands

Mr. Stanley: I didn't get that.

(Last question read by the Reporter.)

A. I don't believe it does.

Q. Does the company employ firemen at the present time?

A. Yes, it does.

Q. How many?

28 A. One.

Q. One. The list shows the name of C. Chrostowski.

Mr. Witt: The last name as a fireman, first employed by the company in September—the exact date is not important.

Mr. Stanley: It says October.

Mr. Witt: Is it October?

Mr. Smoyer: Down to the bottom of that first column.

Mr. Witt: October 9th; that's correct.

Q. (By Mr. Witt). Does this list include the name of the watchmen or watchman, Mr. Sands?

A. I think it does.

Mr. Stanley: May I suggest that we hand this to him?

Trial Examiner Danaceau: Yes, counsel, let Mr. Sands see it and ask these questions.

Mr. Witt: It probably would move faster this way.

Q. (By Mr. Witt). Mr. Sands, I show you this production payroll and included on there are the names of Mr. A. Gardell and Mr. Janousek?

A. Yes, sir.

Q. Both classified as watchmen?

A. Yes, sir.

Q. Both employed during the week of June 22nd?

A. Yes, sir.

Q. Continuously up to date?

A. That's right.

29 Q. Mr. Sands, do you recall the strike of your employees during the months of May and June this year?

A. I do.

Q. Do you recall the date on which those strikes first began? Was it May 21st?

A. I think it was May 23rd; it might be.

Q. You think it was on May 23rd. Do you recall the date on which the men finally came back to work; was it June 17th?

A. Well, they came back and they went out again.

Testimony of Garry Sands

Q. They came back early in June?

A. Came back June 3rd.

Q. Came back on June 3rd and went out again on—

A. June 5th.

Q. June 5th, and came back again on June 17th?

A. I think it was June 17th or 15th; it was a Monday. I think perhaps it was the 17th.

Q. During the period from May 21st or from May 23rd, when the strike first began, until June 3rd when the men came back, was the company engaged in production, the company engaged in any production whatever?

A. May?

Q. From May 23rd, the date on which you just stated the strike began until June 3rd when the men came back the first time, was the company engaged in any production whatever?

30 A. We had the shipping room.

Q. You had the shipping room?

A. Shipping room.

Q. But no production otherwise?

A. No, sir.

Q. During the period from June 5th, the men went out the second time, until Monday, June 17th when they came back, was that also the case?

A. Yes, sir.

Q. Mr. Sands, I show you what purports to be a copy of an agreement that you entered into on the 3rd day of September, 1935 by and between The Sands Manufacturing Company and District No. 54 of the International Association of Machinists, Affiliated with the American Federation of Labor. Is that the agreement which you made and which your company made and which you signed on behalf of your company on September 3rd with District No. 54 of the International Association of Machinists; is that a copy of that agreement?

A. Yes.

Mr. Stanley: Subject to the verification, if the Examiner please.

Trial Examiner Daraceau: Yes; that is not a photo-static copy. It is a copy made typographically and there may be typographical errors, subject to corrections in the wording and figures and so forth, but it may be permitted in.

31 Mr. Witt: That is the Board's Exhibit No. 4 for the Government.

Testimony of Garry Sands

(Said paper referred to was received in evidence and marked "Board's Exhibit No. 4, Witness Sands.")

Q. (By Mr. Witt). Mr. Sands, you stated that Mr. Edward McKiernan had the right to hire and fire and that Mr. George Carbeck, Junior, had the right to hire and fire and you yourself, as secretary-treasurer of the company, had the right to hire and fire?

Mr. Stanley: Will you state the period? That may be important.

Trial Examiner Danaceau: Will you add the time?

Q. (By Mr. Witt). Mr. Sands, you stated that Mr. Edward McKiernan has the right to hire and fire. Did this Mr. McKiernan have this right during the period following June 17, 1935?

A. Well, you asked me to answer yes or no, and I will say yes, subject to the committee. We had no right to hire or fire anybody without the right of the committee.

Trial Examiner Danaceau: What committee?

The Witness: The shop committee, and I cannot answer yes or no. I will say yes, subject to the committee.

(Conversation had off the record.)

Q. (By Mr. Witt). And you stated that Mr. George Carbeck, Junior, has the right to hire and fire. Is your answer the same for this period in question?

A. That's right.

32 Q. For the same period that you would say you, as secretary and treasurer, had the right to hire and fire; would your answer be the same?

A. Yes.

Q. Well, do you have the right to hire and fire today, Mr. Sands?

A. Yes, sir.

Q. You had the right to hire and fire in June, July, and August?

A. Yes, sir.

Q. Mr. Herbert Sands, the superintendent, had the right to hire and fire during the same period?

A. Yes, sir. What period?

Q. June 17th to date; June 17, 1935.

A. Yes.

Q. Did Mr. L. Sands, as President of the company, have the right to hire and fire during this period from June 17, 1935 up to date?

Testimony of Harry F. Potter

A. He is the President and I suppose if he wanted to exercise that right, we would respect it.

Q. Anybody else in a supervisory capacity with the company have the right to hire and fire during the same period from June 17, 1935 up to date?

A. All subject, as I said, to the shop committee.

Q. Who others had that right to hire and
33 fire, subject to the shop committee; any others?

A. There would be a foreman.

Q. Which foreman?

A. The foremen in the various departments.

Q. They all had the right to hire?

A. They didn't have the right to hire.

Q. They didn't have the right to hire. Nobody besides those you named had the right to hire?

A. Well, there would be requests made.

Q. Requests but not the absolute right to hire, Mr. Sands?

A. What is that?

Q. They made requests but not have the absolute right to hire; none had that?

A. No.

Q. Except those you mentioned?

A. I was the one who had absolute say as to hiring, how many men there should be or shouldn't be.

Q. Mr. Hamilton, your chief engineer, did he have the right to hire?

A. I don't think he would exercise that option.

Q. Was it merely an option, Mr. Sands?

A. Yes. Everything was brought up to me by request.

Q. The same situation required of Mr. Carbeck, Mr. Herbert Sands, and Mr. McKiernan?

A. Yes.

34 Mr. Witt: That is all.

Mr. Stanley: No questions.

Mr. Witt: I will call Mr. Harry Potter.

HARRY F. POTTER,

called as a witness by the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Witt). Will you give your name and address please to the Reporter?

Testimony of Harry F. Potter

A. Harry F. Potter, 13736 Madison Avenue, Lakewood.

Q. Mr. Potter, will you tell us what your present occupation is?

A. State Chairman of the Mechanics' Educational Society of America and business agent of the Cleveland district.

Q. Cleveland district of the M.E.S.A.?

A. That's right.

Q. Mr. Potter, did you ever work for the Sands Manufacturing Company?

A. I did.

Q. When did you leave the employment of the Sands Manufacturing Company?

A. I don't know the exact date; sometime this last February.

Q. Sometime this last February, February of 1935?

A. Yes, sir.

Q. Did you resign, Mr. Potter, or were you discharged?

35 A. Well, I was told that I was not in the plant enough so they would have to dispense with my services.

Q. Will you tell us why you weren't in the plant, Mr. Potter?

A. Because I had too many things to do for the organization.

Q. When did you become State Chairman of the M.E.S.A.?

A. March 1st.

Q. Of this year?

A. Yes, sir.

Q. Before that, you were chairman of the—

A. I was chairman of the Local Twenty-two.

Q. Local Twenty-two.

A. Then chairman of the State.

Q. And then chairman of the State. Were the employees of The Sands Manufacturing Company who were members of the M.E.S.A. members of Local Twenty-two of the M.E.S.A.?

A. Yes.

Q. Were you working for The Sands Manufacturing Company during the spring of 1934?

A. Yes.

Q. Were you working when the M.E.S.A. made its first demand to organize the employees of The Sands Manufacturing Company in the spring of 1934?

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

192

38-99



Testimony of Harry F. Potter

A. Yes.

Q. Did you become a member of the M.E.S.A. at that time, Mr. Potter?

A. I did.

36 Q. Did you hold any official position at that time or shortly thereafter?

A. Shop steward.

Q. You became a shop steward?

A. Yes.

Q. In the plant of The Sands Manufacturing Company?

A. Yes.

Q. And you also acted as a shop committeeman?

A. Yes.

Q. Who were the other shop committeemen at this time?

A. Lada Jindra.

Q. Any others?

A. Clarence Dusek and myself.

Q. And yourself. There were three committeemen at this time?

A. Yes.

Q. Shortly after the M.E.S.A. organized the employees of the company, was any request made on the company through its employees of the company?

A. Yes.

Q. Will you tell us what that request was, Mr. Potter?

A. It was a petition signed by all employees but two in the plant, asking for recognition of the shop committee as representatives of the M.E.S.A. and employees of The Sands Manufacturing Company.

Q. And were those demands granted by the
37 company?

A. They were.

Q. And who acted on behalf of the company at this time, Mr. Potter?

A. Mr. Garry Sands and, I believe, Mr. Joe Sands, were there and He-bie Sands, but I am not sure whether Paul Hamilton was there or not.

Q. Paul Hamilton being the chief engineer of the company?

A. Yes.

Q. You said that all of the employees of the company were members of the M.E.S.A. except two; was that your answer?

Testimony of Harry F. Potter

A. Yes.

Mr. Stanley: I didn't understand him to say that. He said that the petition was signed by all but two.

Mr. Witt: Will you read that portion of the testimony?

(Record read by the Reporter.)

The Witness: I will correct that. There were three.

Q. (By Mr. Witt). There were three who weren't members of the M.E.S.A.?

A. Yes.

Q. Will you recall at this time whether the company employed watchmen at this time?

A. Yes.

Q. How many?

A. Two. Three at one time—no, two.

Q. During this period in question?

38 A. Two.

Q. Do you recall their names, Mr. Potter?

A. Yes, Tom McKiernan was one of them and I can't pronounce the other one; it was Jim something or other.

Q. Was it Jim Janousek?

A. Yes.

Q. Janousek, and did these watchmen sign this petition?

A. They did.

Q. Did the company object to their inclusion as members of the M.E.S.A. and to their right to choose a committee at this time?

A. I believe there was some question brought up about it, but it was finally granted.

Q. It was finally granted. In addition to the demand for recognition, Mr. Potter, did you make any other demands?

A. Not at that time.

Q. Not at that time, but did you make any other demands at a later time?

A. Yes.

Q. What were those and when did you make them?

A. I can't give you the exact date, but it was sometime around the first of May. We asked for an increase in pay, with fifteen and ten percent; fifteen percent for lower bracket men and ten percent for higher bracket men.

Mr. Stanley: Was this in 1934?

The Witness: Yes.

Testimony of Harry F. Potter

39 Q. This is in May, 1934?

A. Yes.

Q. Were those demands granted?

A. No.

Q. They weren't. What was the company's position with respect to these demands?

A. They claimed they couldn't afford it. We had other meetings; finally granted ten percent increase.

Q. All employees granted the ten percent?

A. All our members with the exception of two watchmen; they were granted five percent.

Q. No distinction made between the higher bracket and lower bracket men?

A. No; all increased ten percent.

Q. For what period was this agreement made?

A. We weren't to go back in there at least for sixty days for any demands for increase in pay.

Q. Was that agreement later extended?

A. No, nothing brought up about it. Just kept going on until along in October when they were ready to make a bid on the Government work, they called us into the office and wanted us to promise them there wouldn't be any labor trouble if they got the contract, that there wouldn't be any labor trouble on the work.

Q. At this time you were still working on the
40 sixty day agreement even though it expired?

A. Yes. We didn't think it expired, the agreement was there. We didn't go back with any demand in sixty days.

Q. What happened in October when the management called you and spoke to you about this Government order?

A. We told them we wouldn't cause them any labor trouble, but we did insist that if there was any overtime work it would be paid for overtime at the rate of time and a half.

Q. Was that demand granted, Mr. Potter?

A. Yes.

Q. That demand was granted. During this entire period, you were still a member of the shop committee?

A. Yes, sir.

Q. You were a shop steward?

A. Yes, sir.

Q. You represented the employees of the company, the members of the MESA?

A. Along with the other two committeemen.

Testimony of Harry F. Potter

Q. Along with the other two committeemen, you represented the employees of The Sands Manufacturing Company?

A. Yes, sir.

Q. When this ten percent increase was granted to everybody but the watchmen, who got five percent, was it granted to any other employees not members of the M.E.S.A.?

A. I don't know.

41 Q. You don't know. These increases that the company granted remained in effect until when, Mr. Potter?

A. Until May, 1935.

Q. Until May, 1935. Mr. Potter, I will show you what purports to be a copy of a letter dated May 13, 1935, addressed to Mr. Garry Sands at 5401 Sweeney Avenue, Cleveland, Ohio, and signed by you yourself as State Chairman, and two other members of the committee. Did you send this letter to Mr. Garry Sands on this date?

A. I did.

Mr. Witt: Your witness, and we offer this in evidence as Board's Exhibit No. 5.

(The paper referred to was received in evidence and marked "Board's Exhibit No. 5, Witness Sands.")

CROSS EXAMINATION

Q. (By Mr. Smoyer). You say you left the Sands employ in February this year?

A. I think it was February. I am not sure. I didn't keep track of the date. Might have been around the first of March or the first part of March.

Q. Do you remember what you told Mr. Sands your reason for leaving was?

A. I didn't tell him anything. I got a letter from Mr. Garry Sands that owing to my absence from work so much they would have to dispense with my services.

42 Q. Did you tell him you would go into the insurance business?

A. Why, I told him that before.

Q. Oh, you told him that?

A. Oh, yes, before Christmas.

Q. You told him you would leave and go into the insurance business?

A. Oh, no. Garry Sands and I agreed I would work six hours a day.

Testimony of Harry F. Potter

Q. And then afterwards you were spending how much a day in the shop, how many hours a day?

A. Sometimes an hour, sometimes two hours.

Q. What was your position there; what did you do?

A. Fireman.

Q. You were spending one hour a day?

A. Yes.

Q. There couldn't be any complaint?

A. No; I have no complaint at all.

Q. Were you employed as a fireman there in April, 1934?

A. Yes.

Q. And it was then this shop was organized?

A. Yes.

Q. Will you relate the steps that were undertaken in the organization of these employees?

Mr. Witt: We object to that, Mr. Examiner. The question is altogether too broad.

Mr. Smoyer: All right.

43 Trial Examiner Danaceau: Well, make it a little bit more specific.

Mr. Stanley: It was brought out on direct.

Trial Examiner Danaceau: I imagine, though, that if the witness were permitted to answer the question he would probably get along quicker.

Mr. Witt: I will withdraw the objection.

Q. (By Mr. Smoyer). Just tell us how it came about that this shop was organized?

A. Well, the men were dissatisfied with some of the conditions, and they heard that the Gas Association said they were going to get a ten percent increase in pay for all employees in the Gas Association Company, and The Sands Manufacturing Company didn't negotiate with them in any respect to that increase, and they decided all they could do was organize. At that time I was a member of the American Federation of Labor, the International Association of Machinists. I called the Metal Trades Council and asked them if they would send a man out. They said they would. They finally give me applications and I told them I wasn't an organizer. The night we organized, I joined the M.E.S.A. and I called the Metal Trades Council and I told them, "For God's sake to get that bunch because they were going to join an independent union." I was told there weren't enough employees to bother with. At that time I went to the meeting and joined the M.E.S.A. and quit the International Association of Machinists.

Testimony of Harry F. Potter

44 Now, where did you have this meeting?

A. Kelly Hall, on 55th.

Q. Did you have any meetings in the shop?

A. No; only one that Mr. Sands had ordered Ed McKiernan to call and ask if they wanted to stay in their union or outside and they had the privilege to be in any one they wanted.

Q. Was Mr. Sands representing the respondent?

A. He didn't talk to me.

Q. He send word?

A. Through Ed McKiernan.

Q. That you could join any union you wanted to?

A. Yes.

Q. No objection on his part to any organization?

A. No.

Q. Not at all. You were a member of this shop committee?

A. Yes.

Q. How long were you a member of that committee?

A. Until I was let out.

Q. That would be until February this year?

A. Whenever the date was, I don't know.

Q. You were a member of the committee that presented the original petition to the company?

A. I was.

Q. Signed by some thirty-two of the employees?

A. Yes, sir.

45 Q. And the request the committee made that the company recognize the committee as a collective bargaining agency for these employees?

A. They did.

Q. Didn't make any request that the Mechanics' Educational Society of America be recognized as a collective bargaining agency, too?

A. Oh, yes, I requested that myself.

Q. You did?

A. Oh, yes.

Mr. Smoyer: Will the reporter mark this as our exhibit, Respondent's Exhibit No. 3?

Q. (By Mr. Smoyer). I hand you Respondent's Exhibit No. 3 and I will ask you if that is the petition, I will ask you to examine it?

A. All right.

Q. Does that petition ask that the respondent recognize the Mechanics' Educational Society of America as a bargaining unit?

Testimony of Harry F. Potter

A. It does.

Q. Will you read it?

A. Where it says that this committee be privileged to be accompanied by the representatives of the M.E.S.A. where it requires it.

Q. Read the first two paragraphs too.

A. I know what it says.

Q. Into the record.

46 A. I read it. "We, the undersigned employees of this company, acting under the provisions contained in Section 7A of the National Recovery Act have chosen Harry Potter, Clarence Dusek and Lada Jindra as members of a committee to represent us in collective bargaining with the management."

Q. Now, that's right.

Trial Examiner Danaceau: That is not the entire letter, though.

The Witness: No; there is a lot of—

Trial Examiner Danaceau: Read the rest.

A. "It is hereby requested that the management meet with this committee or other representatives that may be chosen from time to time, and that this committee be privileged to be accompanied by representatives of the M.E.S.A. when occasion requires it."

Q. Now, how many employees were in that shop at that time, if you remember?

A. I think 34.

Q. How many signed it?

A. Thirty-two.

Mr. Smoyer: I offer it.

Trial Examiner Danaceau: It may go in.

(The paper referred to was received in evidence and marked "Respondent's Exhibit No. 3, Witness Potter.")

Q. Well, now, after that petition was presented, the respondent's officers met with you and you had a meeting concerning these demands you had made in
47 May?

A. Oh, yes.

Q. And finally this contract was made on or about May 2nd, 1934?

A. Possibly May 2nd; I don't recall the date.

Q. I am handing you Respondent's Exhibit 4 and ask you whether that was the agreement made in May, 1934 between the committee and the respondent?

A. It is.

Testimony of Harry F. Potter

Q. Now, who signed it for the committee, for the employees?

A. I did, Lada Jindra, and C. J. Dusek.

Q. You signed it as the committee, did you not?

A. Yes.

Q. Who signed it for Mr. Sands?

A. Garry Sands.

Mr. Smoyer: I offer it in evidence.

Trial Examiner Danacean: It may go in.

(The paper referred to was received in evidence and marked "Respondent's Exhibit No. 4, Witness Potter.")

Q. Now, then, after that agreement was made, how often did the shop committee meet with the management?

A. Oh, I don't know. Maybe we had a couple of meetings the first week or two and then we go along for a month and not meet at all.

Q. Never had any trouble getting any meetings, did you?

A. No.

Q. Then you come down to October, 1934?

48 A. Yes.

Q. And at that time the respondent is bidding on a Government order?

A. Yes.

Q. And at that time how many employees were in the shop?

A. I think thirty-four.

Q. After this meeting between—

A. Well, wait a minute. Just before that there was a shutdown, working three days a week, so I think all of them—yes, they were all working.

Q. That shut-down was in what month?

A. I don't know what month it was in.

Q. It was in August; wasn't it?

A. There was a couple—if I remember correctly, a couple of times, down three days a week.

Q. How long did you work prior to 1934?

A. I think I went there in October, 1933.

Q. You wouldn't know the previous history regarding the seasonal shut-downs?

A. Well, I don't know. I don't remember whether it was shut down any part of the time the first winter I was there or not.

Q. I see. But they had one or two shut-downs in 1934 or at least three days a week periods?

Testimony of Harry F. Potter

A. Yes.

Q. Do you recall when they started to work
49 on this Government order?

A. Not the exact date, but somewhere around the first of November.

Q. There were additional employees hired; weren't there?

A. Yes.

Q. How many?

A. Why, I don't know. I didn't keep track of them.

Q. Approximately how many?

A. Well, I think there were thirty-five or so.

Q. So that the total number of employees would jump from about thirty-five to about seventy?

A. Oh, somewhere around there. I forget just how many cards there were in the rack.

Q. Did some of those employees join the M.E.S.A.?

A. All but about three or four.

Q. How long did they remain in the plant?

A. Until the Government work was finished.

Q. And then they were discharged?

A. They were laid off.

Q. What do you mean by laying off; any difference?

A. A lot.

Q. What was done with these men?

A. They were laid off.

Q. They were laid off?

A. Yes.

50 Q. With some understanding about coming back?

A. Well, they weren't discharged, so naturally under the contract they were still employees on the payroll of the Sands Manufacturing Company.

Q. Now, what was said to any of them, do you remember that?

A. No; I wasn't butting around. It was not my concern what was said to them.

Q. Did you have any more than one meeting with the respondent concerning this Government order?

A. I don't know. I think probably two or three.

Q. Was there anything said at that meeting about hiring additional employees?

A. Yes.

Q. Was anything said at that meeting as to what would happen to the additional employees after the—

A. Yes, they would be laid off.

Testimony of Harry F. Potter

Q. Not discharged?

A. No.

Q. A permanent severance?

A. That is a permanent severance, a discharge.

Q. Wasn't the understanding between the respondent and your committee that the Sands Manufacturing Company might hire these additional employees but only on condition when this order was completed they would be fired?

A. No.

51 Q. Would you say that is not true?

A. No, that is not.

Trial Examiner Danaceau: Gentlemen, at this time it is approximately twelve o'clock, so we will recess until one thirty.

(Thereupon, at 12 o'clock noon a recess was taken until 1:30 o'clock p. m.)

AFTER RECESS

(The hearing was resumed at 1:30 o'clock p. m., pursuant to the taking of recess.)

HARRY F. POTTER,

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

RE-DIRECT EXAMINATION (Continued)

Q. (By Mr. Witt). Mr. Potter, you testified this morning that on May 13th, 1935, you sent this letter which is now marked Board's Exhibit No. 5, to Mr. Garry Sands?

A. That's right.

Q. Now, did you get any response to this letter you sent to Mr. Sands, by mail?

A. No.

Q. You got no response?

A. No.

Trial Examiner Danaceau: Wait a minute. You asked by mail. You meant by mail or any other form?

Mr. Witt: May I clarify that?

52 Q. You got no response to this letter by mail from Mr. Garry Sands?

A. No.

Testimony of Harry F. Potter

Q. Did you see Mr. Garry Sands at any time shortly thereafter?

A. No; I called him on the telephone first and then saw him afterwards.

Q. Called him on the telephone, so you did see him shortly after you sent this letter?

A. Yes.

Trial Examiner Danaceau: Will you speak up so the Reporter and everybody can hear you and so that we can get it into the record. After all, we have to have the testimony reduced to writing.

Q. (By Mr. Witt). Then you did see him shortly after you sent him this letter?

A. Yes.

Q. Do you remember the date?

A. No.

Q. Was it during the month of May?

A. Yes.

Q. It was during the strike in May?

A. Oh, yes.

Q. Who was with you when you saw Mr. Sands after you sent this letter?

A. The shop committee.

53 Q. The shop committee. Do you remember who the members of that committee were?

A. Jindra, Tony Moraco, and Clarence Dusek.

Q. There were no other members of the committee?

A. No.

Q. At that time you were State Chairman?

A. Yes.

Q. You signed as State Chairman?

A. Yes.

Q. Did Mr. Sands object to your presence at that conversation in May?

A. No.

Q. He didn't object to your presence?

A. No.

Q. Did you see Mr. Sands again later that month, in May?

A. Yes.

Q. Who attended that conference?

A. Frank Pansky, Tony Moraco, and Clarence Dusek and myself.

Q. Who represented the company at that conference?

A. The Conciliator, William Rogers.

Q. William Rogers, for the Department of Labor?

Testimony of Harry F. Potter

Q. Who represented the company at that conference?

54 A. Mr. Garry Sands, Joe Sands, Paul Hamilton, and Herbie Sands.

Q. Was any objection made by any of the company officials in your presence at that conference?

A. No.

Q. Were you there as State Chairman of the M.E. S.A.?

A. Yes.

Q. Do you remember any specific question that you took up with Mr. Garry Sands on behalf of the employees at this conference?

A. Oh, there were several of them.

Q. Well, what was one of them?

A. Well, increase in pay.

Q. An increase in pay and you talked for the employees?

A. Yes.

Q. With respect to that?

A. Yes.

Q. What other issues were discussed at this conference?

A. Some conditions.

Q. Some conditions.

Mr. Stanley: What?

A. Some conditions.

Q. And you talked for the employees on that issue?

A. Yes.

Q. What other issues were discussed on this conference?

55 A. Mr. Garry Sands brought up the subject that some of the employees weren't good workmen and he wanted to fire them.

Q. Did you discuss that question with them?

A. Yes.

Q. What was the result of that?

A. I told him he had to take them back as the agreement called for it.

Q. He agreed to do that?

Mr. Stanley: I object. It is leading.

Trial Examiner Danaceau: It is a little leading.

Mr. Witt: Withdraw the question.

Q. Did you see Mr. Garry Sands or Mr. Herbie Sands at any time after this conference we have been just talking about?

Testimony of Harry F. Potter

Q. You didn't. Did you ever speak to Mr. Garry Sands on the telephone?

A. Yes.

Q. When was that, Mr. Potter?

A. September 4th.

Q. What occasion—well, withdraw that. Did you call Mr. Sands or did Mr. Sands call you?

A. I called Mr. Sands.

Q. What occasioned that call by you to Mr. Sands on September 4th?

A. Because two of the boys came into the office and said they signed a contract to the American Federation of Labor and locked out. Frank Pansky and 56 Lada Jindra—

Q. You say they signed with the American Federation of Labor; you mean who?

A. The Sands Manufacturing Company.

Q. You say you had been told by Garry Sands of The Sands Manufacturing Company?

Mr. Stanley: I object to that.

Trial Examiner Danaceau: That may go out.

Mr. Stanley: We are letting a lot of hearsay testimony go in but not that.

Mr. Witt: Note an exception.

Q. Did they tell you whether they had seen any official of the company on that day?

A. Yes.

Q. Who did they say they saw that day?

A. Well, Frank Pansky said he saw Garry.

Q. And you called Mr. Garry Sands on the phone?

A. Yes.

Q. Will you give us the substance of that conversation with Mr. Garry Sands?

A. I asked him what the hell he was trying to pull off there.

Q. What did he say?

A. He said, "What do you mean?"

Mr. Stanley: What?

57 Trial Examiner Danaceau: "What do you mean"?

A. I told him that I understood that our men were out and he signed a contract with the American Federation of Labor and what about our contract.

Q. What did he say to that?

A. He said, "Your contract is no good. You didn't sign it."

Testimony of Harry F. Potter

Q. He said you didn't sign it. What was your response to that?

A. I said it didn't make any difference; the committee represented the M.E.S.A.

Q. Did you ask him whether he would meet you that day?

A. Yes.

Q. Or any time thereafter?

A. Yes.

Q. Did he agree to meet you?

A. No.

Q. What did he say?

A. He said the M.E.S.A. was out and all the old men were discharged and he had nothing to talk about to me.

Q. Did he say anything else on the phone that day that you can recall?

A. He said he had signed a contract with the American Federation of Labor.

Q. What did you do after Mr. Garry Sands refused to meet you?

A. Why, I probably hung up. I know it
58 didn't last very long after that. I told Jindra and Pansky to get the men together for the next day and have a meeting in the office.

Q. Was there a meeting in your office then the next day, September 5th?

A. Yes.

Q. About how many attended that meeting?

A. I would say about between forty-five and fifty.

Q. Were they all employees of The Sands Manufacturing Company?

A. They had been, yes.

Q. You mean—what do you mean by they had been?

A. Well, they had been employed at different times, since the beginning of the Government order in 1934. None of them had ever been discharged, been laid off.

Q. Did you give the men any instructions at this meeting?

A. Yes.

Q. What were your instructions?

A. Told them to go out and picket the plant.

Q. Did you have any meetings with the employees of The Sands Manufacturing Company thereafter?

A. Yes.

Testimony of Harry F. Potter

A. Quite a few; I don't know how many.

Q. What happened at these meetings?

A. Well, they would give me information they got.

Q. Information relative to what, Mr. Potter?

59 A. Relative to what The Sands Manufacturing Company had said to some of them they had called in and tried to get them to get back to work.

Q. How many employees of The Sands Manufacturing Company would attend these meetings that you had from time to time?

A. It would vary from forty-five and fifty up to sixty.

Q. Mr. Potter, you testified that in November of last year when these men were hired for the Government order, that some of them joined the M.E.S.A.; can you tell us how many joined the M.E.S.A. at that time?

A. All the new men that were hired, with probably three or four.

Q. All the new men except three or four?

A. Yes. I didn't keep an accurate record, because I wasn't the secretary of the Local.

Q. What was your position at that time?

A. Shop steward.

Q. Shop steward? And as such, did you attempt to get these employees to join the M.E.S.A.?

A. No; I don't think I talked to over one of them.

Mr. Witt: Your witness.

Examination by TRIAL EXAMINER DANACEAU.

Q. (By Trial Examiner Danaceau). Just a minute. What is a shop steward?

60 A. He is a sort of chairman of the shop committee. In other words, he has charge of the shop, I imagine.

Q. Is that an office of the labor group?

A. Oh, yes.

Q. It has nothing to do with the shop itself?

A. No. The shop steward is chairman of the shop committee and in charge of all the members in the shop.

Mr. Witt: And wherever the M.E.S.A. has members in its shop, it also has a shop steward.

The Witness: Yes.

*Testimony of Harry F. Potter***CROSS EXAMINATION**

Q. (By Mr. Stanley). I think we have reached the point, Mr. Potter, in the spring of this year when you had sent this demand which is marked as an exhibit and you testified that there was a telephone conference in which you made an appointment with Mr. Sands?

A. Yes; I did. I made an appointment over the telephone.

Q. That was a matter of how much, how long, a day or two or three days after you sent the letter?

A. Oh, I think I let it go—I might have called him at the time we demanded an answer be made, and he said he wasn't ready, if I remember correctly, he wasn't ready because Joe Sands was out of town.

Q. At any rate, within a very short time you did sit down and talk?

A. Yes.

Q. And you discussed this matter of an increase in wages; didn't you?

A. Yes.

Q. As I remember, as far as the wages were concerned, there had been an agreement in the fall of a ten percent increase; wasn't that your testimony?

A. No; not in the fall.

Q. When was the ten percent increase?

A. May, 1934.

Q. Oh, yes, May, 1934. Now, had there been a voluntary increase in wages after that time?

A. Not in 1934.

Q. Was there in the winter or spring of 1935?

A. There was in the spring of 1935. This was that the men that were hired during the Government order were laid off after the Government order was finished and hired in the spring and called back and informed on post cards that they were given a ten percent increase.

Q. That is what I am referring to. Following that demand, there came this demand for an increase of five percent per hour?

A. Yes.

Q. All right. You discussed that with Mr. Sands?

A. Yes.

Q. Did you say to Mr. Sands that you thought two and a half cents was enough?

A. No; I didn't say that at all.

Q. Was there anything said about that?

Testimony of Harry F. Potter

A. Oh, yes. Garry said.

Q. Did you say if your men would recommend it?

A. I told Garry I would go back and see what about the raise.

Q. Did you say you would recommend it?

A. No; I didn't say I would recommend it.

Q. Now, at that same time you discussed some men whom he said were incompetent?

A. Yes.

Q. Did you know the men?

A. Yes.

Q. Or did you not agree with him that these men were incompetent?

A. Possibly, in a way, yes.

Q. Well, did you?

A. Well I said they weren't as good men as they should be.

Q. Yes. Now—

A. That is not all of them.

Q. Some of them?

A. Yes, some of those.

Q. Of whom he complained?

A. Of whom he complained, yes.

Q. At that time, why was he asking you if he could let them off?

A. Because he wanted to get rid of them, I suppose.

Q. He couldn't get rid of them without your approval?

A. Without a hearing before the committee and the foreman who made the charge.

Q. And that had been true all throughout the dealings between the company and the M.E.S.A.; hadn't it?

A. There would be a hearing between the shop committee and the management and the foreman who made the charges.

Q. And he—suppose after that hearing the management said these men are incompetent and the committee said they are not; then what happened?

A. We would probably call in some way to get it out of the way.

Q. What way was provided under the contract?

A. We never had such a disagreement come up, so we don't know how it would be handled.

Q. But there was nothing in the contract which prevented the M.E.S.A. from striking as a result of that disagreement, was there?

Testimony of Harry F. Potter

A. No. There is nothing in any agreement that would prevent them from striking. Labor always has the right to strike.

Q. Let us see if we can get you straight. You mean that in all the labor disagreements, labor has a right to strike?

A. Unless it is written in there that they haven't the right to strike. We don't have it written in there.

Q. In other words, you didn't write it into
64 your contract; therefore, whatever may have been the grievance, merited or unmerited, you still had the right to strike?

A. Yes, certainly.

Q. That is true with all M.E.S.A. contracts?

A. No.

Q. But with this particular Sands contract, it was an exception?

A. There was nothing to prevent us from going on strike.

Q. If you had made a contract today that certain men were to be allowed to be dismissed, discharged, and they were discharged and then you changed your mind about it and said they must be reinstated, you still have a right to strike according to your assertion; is that fair?

A. If we made an agreement that we had a right to strike, but if it wasn't in the agreement, we had a right to strike.

Q. At any rate, however, what the disagreement was, there was nothing to hold the employees on the job if there was a disagreement as to the interpretation of a contract or any disagreement; is that right?

A. No; there is no agreement to hold them.

Q. Well, he asked you to let him discharge five men, was it five or—

A. Seven men.

Q. Seven men. How many did you agree should be discharged?

A. I didn't agree any should be discharged
65 without a hearing.

Q. But you agreed that possibly some of them should be men that should be let go; is that right?

A. If they had a hearing and the foreman brought charges against them.

Q. Is that provided in the contract?

A. (No answer).

Testimony of Harry F. Potter

Trial Examiner Danaceau: Have I a copy of that contract? I think I have a copy of the agreement with the International Association of Machinists, but I take it that is not the agreement we are talking about.

Mr. Witt: They have no extra copies.

Mr. Stanley: No. I have it here.

Q. Here is a provision; let me read it to you. Reading from Exhibit 4—

Mr. Witt: Respondent's Exhibit 4.

Q. (By Mr. Stanley). "When an employee is discharged, he may have the right for a hearing before the shop committee and the company officers." Now, I find no other provision here as to what happens after the hearing, so I am, therefore, asking you the question I asked you possibly before, if there was a disagreement at that hearing whether the men still had the right to strike if the company insisted upon their discharge?

A. Certainly.

Q. Yes. Well, these two disagreements at that time were apparently this increase in wages and this demand of the company that it be permitted to discharge 66 seven men. Those seven men were men who had belonged to the M.E.S.A.; is that right?

A. Yes.

Q. But all the men belonged to the M.E.S.A. at that time?

A. Yes.

Q. That is true. Substantially, no men ran the shop at that time who didn't belong to the M.E.S.A.; possibly two?

A. Four or five men.

Q. Yes, four or five. At that point did you make an examination of the qualifications of these men?

A. I didn't have to. I knew them. I worked with them.

Q. I see. It was upon that basis, of that personal information that you had, that you thought it was doubtful as to whether some five men at least should be retained; is that right?

A. I asked—they were supposed to come back without any discrimination of employees, to return to work without discrimination. If he had a grievance or any of the other men, he had a right to a hearing before the committee.

Q. Answer my question. You already answered me in your testimony that there was a doubt about five of

Testimony of Harry F. Potter

the men; did you say that?

A. I said there possibly wasn't the—

Q. All I am asking you, if that doubt was created by your knowledge of the men while you were an employee of The Sands Company?

A. Yes.

67 Q. That is right. That is all I am asking about. At any rate you did take back a suggestion of an increase of two and a half cents an hour?

A. Yes.

Q. I meant took it back to the members of the M.E.S.A.?

A. Yes.

Q. They voted it down?

A. Yes.

Q. Did you take up with them the discharge of these seven men?

A. No, not at that time.

Q. You didn't even suggest to them?

A. No, because it wasn't even mentioned.

Q. I am asking you if you did; I am not asking you why.

A. No.

Q. No. Now, on the occasion when you discussed with Mr. Sands your acquiescence of the discharge of these seven men, was the shop committee there at that time?

A. They were.

Q. That shop committee had been changed from time to time?

A. No.

Q. Up to that time, the same men made up the shop committee as in the spring of 1934?

A. No.

Q. It hadn't?

68 A. Not constantly as you stated.

Q. Had it been changed?

A. Yes, some.

Q. Of the old committee, how many were on the same committee?

A. Jindra and Dusek.

Q. How many new ones?

A. Moraco and Pansky.

Q. They voted down this increase of two and a half cents an hour?

Testimony of Harry F. Potter

Q. I mean the employees.

A. Our members, yes.

Q. Yes.

A. Yes.

Q. Then did you come back and report that to Mr. Sands?

A. Yes.

Q. And said that you were in a disagreement on that?

A. I didn't tell him I was in disagreement. I said the men refused to accept it.

Q. How soon after that was the strike called?

A. Noontime.

Q. When did you report?

A. Noon hour.

Q. You reported at noon?

A. I happened to talk to the men while eating lunches.

Q. You reported and the strike was called immediately?

A. As I remember, the men went out at noontime.

Q. The fact of the matter is some of your men pulled the whistle and called the strike?

A. No, not at that time.

Q. Now, what time did they?

A. They possibly did on the second strike.

Q. They did on the second strike. At any rate, you reported at noon and the strike was called simultaneously with your report of the disagreement?

A. They instructed me to go back and tell Garry Sands to—

Q. Just answer the question.

Mr. Stanley: Please read the question.

(Last question read by the Reporter.)

A. Yes, I reported it.

Q. That strike was on what date?

A. I think it was May 21st; I am not sure.

Q. You didn't communicate with Mr. Sands from May 21st until September 4th?

A. Oh, yes.

Q. When did you meet him next?

A. I don't know just what the date was, but I called Mr. William Rogers, the United States Department of Labor Conciliator, and we made an appointment with him.

Testimony of Harry F. Potter

70 Q. Then I misunderstood your answers. During this time, was the shop picketed?

A. Yes, sir.

Q. Did you establish pickets there?

A. Yes.

Q. And then you called the Federal Conciliator in?

A. Yes.

Q. And there was a meeting with the Conciliator?

A. Yes.

Q. You were present?

A. Yes.

Q. An agreement reached?

A. Yes, as far as—I couldn't make an agreement. I had to take it back to the assembly. The Committee had no right.

Q. Now, tell us what that agreement was?

A. I think it was two cents an hour increase in pay for the old men and four cents or ten percent was granted to the new men was to stand; all men to be returned without discrimination.

Q. What was the arrangement as to permitting or letting five men go?

A. None at all. They were all to come back without discrimination; that was up to them to make arrangements.

Q. After they came back?

A. Yes.

Q. You were in that meeting?

A. Yes—no. Which do you mean?

71 Q. I thought I meant the meeting—

A. Surely, when the Conciliator was there.

Q. What?

A. When the Conciliator was there.

Q. Well, there was an agreement made with the Conciliator; is that right?

A. To—between all of us. We all sat in.

Q. Yes.

A. We didn't make an agreement.

Q. Yes, the company said they would bind themselves, and you said you would take that up with the men?

A. Yes.

Q. All right. There was considerable discussion as to the company being permitted to discharge these men they claimed were incompetent; wasn't there?

A. Yes.

Testimony of Harry F. Potter

Q. You finally agreed, as I understand your testimony, that while everybody would be returned to work, that after they had returned to work, the company then should bring up the discharge of how many men?

A. Five.

Q. Five. And they were named?

A. Must have been, because seven—

Q. Might have been because it was talked over; there were seven of them?

72 A. Yes.

Q. And five out of this seven selected?

A. No.

Q. Is that right?

A. No.

Q. Named; I am not saying you did?

A. There were several others named, but there were seven in common.

Q. There is some significance to this number of five. What was arranged about this five?

A. They were to go back to work.

Q. Well, everybody was to go back to work?

A. Certainly.

Q. What about the five?

A. To go back, but a hearing between the shop committee and the management.

Q. What about the others that Sands claimed were incompetent?

A. There wasn't much complaint about them.

Q. The five; there must have been something different done in that conference about the five. Then there was seven or more?

A. Yes, personal feeling with the superintendent in some of them.

Q. Finally what was done about the five?

73 A. As far as I know, they weren't called back to work and new men hired in their places.

Q. It was agreed, as I understand, everybody was to come back?

A. Yes.

Q. And then five might be brought up on charges of incompetency and a hearing had; is that right?

A. Yes.

Q. All right. Now, on your first contract, who drafted the wording of the first contract in 1934?

A. Cl., probably five or six of us.

Q. M.F.S.A. men?

Testimony of Harry F. Potter

A. Oh yes.

Q. You drafted all the wording of the contract?

A. I didn't.

Q. I don't mean you personally. I mean the M.E.S.A. people drafted it?

A. Yes.

Q. That's right. So I am coming to this point when your conference or tentative agreement was reached—put it that way—with the Federal Conciliator; who was then to draw the contract?

A. There wasn't anybody specified.

Q. As a matter of fact, the M.E.S.A. did draw the same?

A. No; they didn't.

Q. No?

74 A. No.

Q. Who did?

A. Garry Sands helped.

Q. Were you there?

A. No.

Q. Well, I guess you don't know. You do know you helped draft the first one?

A. Garry did most of the dictating of the first one.

Q. At any rate, when you broke up the conference with the Federal Conciliator, when were the men to come back?

A. The following Monday.

Q. The meeting was on what day, that meeting with the Conciliator?

A. I think it was the 20th; I can't give you the date exactly.

Trial Examiner Danaceau: Approximately?

The Witness: I think it was on a Friday or Thursday, or the Friday before they went back to work on a Monday.

Q. (By Mr. Stanley). What time did they go back to work?

A. (No answer).

Mr. Garry Sands: Monday, the 3rd.

Q. (By Mr. Stanley). All right. Now, we can tentatively say, can we not, it was the Friday before—the Thursday or Friday before Monday, June 3rd; is that right?

A. Yes.

Q. Did you withdraw the pickets?

75 A. Oh, yes.

Q. You withdrew the pickets then?

Testimony of Harry F. Potter

A. Yes.

Q. Very well. They had been out how many days?

A. Oh, eleven or twelve.

Q. Now, did you have any more conferences with Mr. Sands after that, before September 4th?

A. No.

Q. The matter came back to the meeting of the M.E.S.A. and a tentative agreement reached with the conciliator; is that right?

A. Yes.

Q. You attended that meeting?

A. Yes.

Q. Did you tell anything about these five men?

A. Yes.

Q. Did you mention them by name?

A. I don't think I did.

Q. And the M.E.S.A. approved the agreement?

A. Yes.

Q. But the men who voted for it didn't know exactly—didn't know at all who the five men were; is that right?

A. No.

Q. No. Were you there on the Monday when
76 they came to work?

A. No.

Q. Where were you?

A. I don't know. Might be any place.

Q. Well, you didn't anticipate any trouble at all?

A. Not a bit.

Q. You didn't think it was any part of your duties to see that the men did report for work?

A. I never bothered the management or any shop.

Q. I know, but that is to be performed by the M.E.S.A. Didn't you think that that might be a rather—something obligatory on you to see that your men did do what they agreed to do?

Mr. Witt: I object.

Trial Examiner Danaceau: Objection sustained.

Mr. Stanley: That's right. I will withdraw it.

Q. (By Mr. Stanley). You didn't come anyway?

A. No.

Q. And you heard afterward that the men didn't work?

A. They did.

Q. Oh, they did work? I am told they didn't; on Monday or Tuesday; is that right?

Testimony of Harry F. Potter

Mr. Witt: This is not an objection, but we wish the other side would ask questions instead of testifying.

Trial Examiner Danaceau: Well, on cross examination they have a little more latitude.

Mr. Stanley: Well, if there is any trouble
77 about that—it is quite apparent what happened. I was under the impression that they didn't work. I will withdraw my question.

Q. (By Mr. Stanley). The men did work for two days; is that true?

A. Two or three.

Q. And then they went out again; is that right?

A. So I understand.

Q. Did you call Mr. Sands then?

A. Yes, I think I did.

Q. I thought you said that after that you didn't have any more conferences?

A. Well, as time goes on, those things come to me.

Q. Well, have you any clear recollection of calling him then?

A. Yes, I think I do now.

Q. Did you come over to see him?

A. No; I didn't.

Q. Now how long did the men stay out then?

A. Until the 15th of June.

Q. They had then been out how long, from what time?

A. I think they went back to work on the 3rd and walked out on the 6th.

Q. I have lost the date when they went out on strike; the 21st they went out on strike?

A. Yes.

78 Trial Examiner Danaceau: That is the first strike, the 21st of May?

Mr. Stanley: Yes.

Trial Examiner Danaceau: And then returned about June 3rd and went out three days later and returned about the 15th; is that what you said?

The Witness: Yes.

Q. (By Mr. Stanley). All right. There then ensued some conference which led up to another contract; didn't it?

A. Yes.

Q. You weren't in this conference?

A. No.

Q. That was wholly and solely the committee?

Testimony of Harry F. Potter

A. Through my instructions.

Q. I mean you didn't appear?

A. No; I didn't go to the meetings.

Q. And in what important respects was the contract of June 15th different from the contract of whatever date it was in 1934, the first contract, the first written contract?

A. How is that?

Q. In what important respect is the contract of June 15th different from that of 1934, whatever date it was?

A. Oh, there isn't a whole lot of difference in it.

Q. There is some difference; there was nothing as to seniority as in the original contract, was there?

A. Oh yes.

79 Q. Is there?

A. Oh, yes.

Mr. Witt: What was the last question?

(Last question read by the Reporter.)

Mr. Witt: This contract made in June is not in evidence.

Trial Examiner Danaceau: I was about to ask that question.

Mr. Witt: Of course, we expect to put it in evidence and at that time the contract will speak for itself.

Trial Examiner Danaceau: The question is what is the difference?

Mr. Stanley: I think I will withdraw it. They will speak for themselves.

Q. (By Mr. Stanley). Well, now, you had testified that these new employees hired at the time of the Government order were to be laid off and not discharged, and you have stated that in your mind there is a difference between layoff and discharge and we heard what you believe that difference to be. Is that really true that the agreement as to the additional men, that they were to be laid off and not discharged; is that correct?

A. I didn't quite get your question.

Q. Well, as to when the new men were hired, as I understand it, your understanding was that the new men could be laid off and not discharged; wasn't that what you said?

A. I don't think I said they were laid off and not discharged.

Q. Oh, I see. In other words, you don't set

Testimony of Harry F. Potter

80 any importance upon the agreement as to that, but the mere fact that when the new men were let go, let us say they were laid off and not discharged?

A. Yes.

Q. I see. Well, all right. Well, your men came back on June 15th; that is right, isn't it?

A. Yes.

Q. And they stayed on for the summer?

A. Yes.

Q. They came back June 17th?

Mr. Witt: Yes, that was on a Monday. June 15th was Saturday.

Q. Apparently the contract was on June 15th and they came back on the 17th?

A. Yes, on a Monday.

Mr. Stanley: Where is that contract? You haven't introduced it. I don't see why we can't put it in on cross examination.

Q. (By Mr. Stanley). We will show you, Mr. Potter, an agreement marked, dated June 15th—

Mr. Witt: Now, before the witness identifies this, the witness has already testified, if it please the Examiner, that he didn't take part in these negotiations which led to the signing of these agreements. We intended
81 to put it in by one of the parties in the negotiations.

Trial Examiner Danaceau: If he knows about it.

Mr. Stanley: Why not stipulate it? It is stipulated between the parties that Respondent's Exhibit 5—

Mr. Witt: Let me see it first.

Mr. Stanley: —is an agreement executed at or about that date between the parties mentioned, and we introduce it with the right to substitute a copy.

Mr. Witt: Well, we object to the introduction of this document inasmuch as it is not signed on behalf of the company. The copy we wish to introduce into the record is signed on their behalf.

Trial Examiner Danaceau: Well, let us have your copy. We will stipulate—you want it as a Government exhibit?

Mr. Witt: It is not necessary. We can put it in as a Respondent's exhibit.

Mr. Stanley: Mark this instead of ours.

(Conversation had off the record.)

Trial Examiner Danaceau: Before we proceed, this has been marked and introduced as Exhibit—

Testimony of Harry F. Potter

Mr. Stanley: As Exhibit 5.

Trial Examiner Danaceau: Introduced as Respondent's Exhibit 5.

(The paper referred to was received in evidence and marked "Respondent's Exhibit No. 5, Witness Potter.")

Q. (By Mr. Stanley). Now they are back to
82 work again. What is the next thing that happened?

Mr. Witt: Well, ask him a question, Mr. Stanley, what is the next thing?

Mr. Stanley: Now let us—

Trial Examiner Danaceau: Let us get down to the case, Mr. Stanley.

Mr. Stanley: Yes.

Q. (By Mr. Stanley): What is the next thing you know that happened?

Mr. Witt: Mr. Examiner—

Trial Examiner Danaceau: It is a pretty broad question, but I suppose you have reference to any difficulties—

Mr. Stanley: Yes.

Q. (By Mr. Stanley). What I mean is what difficulties really happened after that between the company and the M.E.S.A.; that is the subject matter we are asking.

Trial Examiner Danaceau: Can you make it more specific as to the time with regard to particular matters?

Mr. Stanley: All right. Now, I will withdraw the question.

Q. (By Mr. Stanley). Was there any hearing about these five men claimed as incompetent men?

A. Not that I know of.

Q. Now who were those fellows?

A. I can't name them all offhand.

83 Q. Well, give us those you remember?

A. Well, there was Jack Norman.

Mr. Witt: N-o-r-m-a-n.

Q. (By Mr. Stanley). Who else?

A. Jack Ratchford, and I think Hank Schilthorn.

Mr. Witt: That is Henry instead of Hank.

A. And Bernard McKiernan. That is five of them.

Trial Examiner Danaceau: That is only four.

The Witness: That is all I can remember.

Q. Well, you heard about these negotiations after this second strike in June; didn't you?

Testimony of Harry F. Potter

A. Oh yes.

Q. And you were advising with the committee or noting what they were talking about to the company?

A. Yes, most of the time they reported.

Q. All right. Now, there wasn't anything else to talk about except these claimed incompetent men, was there?

A. After June 17th?

Q. No; after June 5th. The men came back to work around the 3rd and worked there the 4th and went off again on the 5th, and then they were off again from the 5th to the 17th?

A. Yes.

Q. I am talking about that period between June 5th and June 17th, the only point of difference between the company and the men were the claims of discharging these incompetent men; that was the discharge?

84 A. All I can say was hearsay, but they revamped the whole agreement in that period.

Q. Let us see if we can get that. The agreement reached with the Conciliator never was reduced to writing?

A. No.

Q. You didn't attempt to reduce it to writing?

A. Oh yes, I did.

Q. But it was never presented to the company?

A. No.

Q. All right. Did you make a draft?

A. No, because the day I started to make the draft they walked out.

Q. Did they walk out before they told you?

A. No.

Q. At that time were you preparing a draft?

A. Yes.

Q. Then you stopped making the draft of the contract?

A. I did when they walked out.

Q. Yes, and then you waited for some more conferences between the committee and the company; is that correct?

A. Why, I didn't wait; no.

Q. At any rate, you did nothing in drafting the contract until the consummation of these conferences; is that right?

A. Yes.

Testimony of Harry F. Potter

85 Q. What?

A. Yes.

Q. That is correct; isn't it?

A. I drafted the original agreement and then revamped it, before they went back to work; the committee did that.

Q. I see. They had a conference with the company between June 7th and 17th, of course?

A. As far as I know, yes.

Q. They reported back to you?

A. Yes.

Q. The Conciliator was not in this conference?

A. No.

Q. These negotiations were wholly and solely between the committee and the company?

A. Yes.

Q. You didn't enter into them and no officer of the M.E.S.A. entered into them?

A. Yes.

Q. Who?

A. Tony Moraco.

Q. What officer?

A. He was an auditor and Lada Jindra, a representative of the Board.

Q. At any rate, those two you mentioned were on the shop committee?

A. Yes, but they were officials also.

86 Q. I understand the four members of the shop committee constituted the four negotiators on the other side of the table in that period?

A. Yes.

Q. They finally reported to you that they had reached an agreement?

A. Yes.

Q. And that agreement was entirely different or in many respects different from the one that you had started to draft?

A. Not many.

Q. I thought you had just said they made a good many changes?

A. I didn't say they made a good many changes. I said they revamped it.

Q. Revamped; in what respect was it revamped?

A. Some phrases changed and one paragraph added.

Q. I see. What paragraph was that?

A. I don't know just offhand.

Testimony of Harry F. Potter

Q. Can you refresh your recollection by looking at it?

Mr. Witt: I will give him one of these copies so you don't have to stand up, Mr. Stanley.

Q. (By Mr. Stanley). Oh, wait a minute. Before you look at that—I will withdraw the question and let me ask you a couple of things I remembered and then we will come back to that again. I believe you testified a moment ago that everybody was to come back
87 without discrimination; is that right?

A. Yes.

Q. I notice in this and I am calling your attention to it, particularly Paragraphs 15 and 16 in there, which says that Harry Gassell and Milburn Moritz be discharged immediately and not be rehired at any time?

A. Yes.

Q. "Nor will they be employed to do any work for The Sands Realty Company." How are those men—just state their grade of employment. What did they do?

A. One was considered as a machinist, and the other was considered as a laborer.

Q. All right. Were those two the men that the company complained were incompetent?

A. No.

Q. These men were men objected to by the M.E.S.A. I presume?

A. Yes.

Q. Did they belong to the M.E.S.A.?

A. At one time.

Q. Had they dropped out?

A. They were expelled.

Q. You expelled them?

A. We sure did.

Q. All right. Let us go to the next Paragraph 16. "All Carbeck's relatives be discharged immediately."
Now, the Carbecks, as I understand it, never
88 had applied or belonged to the M.E.S.A.?

A. No.

Q. They consisted of two relatives; what were they, father and son?

A. As far as I know.

Q. How is that?

A. Senior and Junior; I imagine they were.

Q. Father and son. They had some relations in there, did they?

A. Yes.

Testimony of Harry F. Potter

Q. How many relatives did they have?

A. I don't know. At that time I didn't work there, but I imagine two or three.

Q. Now, the Carbecks were members of the A. F. of L. at that time?

A. No.

Q. What?

A. No.

Q. They didn't belong to any union?

A. Never have.

Q. Never had belonged to any union?

A. No.

Q. Now, the Carbecks weren't included in these ones the company wanted to be discharged as incompetent?

A. Certainly not.

89 Q. What?

A. No.

Q. M.E.S.A. objected to that; is that right?

A. What do you mean, objected to that? You mean the Carbecks?

Q. Yes.

A. We didn't object to Carbecks.

Q. Upon whose suggestion did Paragraph 16 go in there?

A. The members of the M.E.S.A.

Q. I beg your pardon?

A. The members of the M.E.S.A. that worked in Sands.

Q. The members of the M.E.S.A. that worked where?

A. In Sands.

Q. Now, you drafted this contract marked Respondent's Exhibit 5; did you?

A. Is this the contract of June 15th?

Q. Yes.

A. No.

Q. Well, was it drafted up in your office I mean?

A. No.

Q. Where was it written up?

A. In a room back of—it was changed and revamped in a room, I believe, back on the corner of Sweeney and 55th Street.

90 Q. Well, I don't know if it is important, but it wasn't at the factory?

A. No; we weren't a company union.

Q. What?

A. We weren't a company union.

Testimony of Harry F. Potter

Q. You were at that time in conference with your committee when this was drafted; that is what I mean?

A. Not all of it.

Q. Where was part of it drafted?

A. In our office.

Q. What?

A. In our office.

Q. All I am getting at is this, that either you or the committee, away from the Sands, drafted this contract?

A. Certainly.

Q. Well, that's all right. And the original you had drafted one before that that you submitted to the company at about that time, undated?

Trial Examiner Danaceau: You mean after that one had the second time?

Mr. Stanley: I mean—let us put it plainly.

Q. (By Mr. Stanley). That is before the contract of June 15th was signed by the Sands, you had drafted a form of contract and had submitted it to Sands, which was not signed, and then you redrafted that and that contract as redrafted was signed; isn't that true?

A. As I remember correctly, the contract was
91 submitted to the Sands Manufacturing Company originally. There was another one with four or five paragraphs was signed and sent registered letter.

Mr. Stanley: We are using this only for the purpose of taking up the inquiry as to these discharged employees. It is not binding upon any of them.

Trial Examiner Danaceau: It is merely a proposal, but it was not accepted.

Mr. Stanley: That is all, and some of the explanations, simply for the purpose of cross examination; it will not be introduced for any binding effect upon the parties.

Q. (By Mr. Stanley). I now show you the paper which purports to be signed by yourself as well as four members of the committee and ask you if you do not now recollect that paper?

A. Yes.

Q. Now, will you examine it? It is substantially the same as the paper finally submitted, with the exception of sixteen and a paragraph marked seventeen in the first and in effect an agreement; isn't that correct?

A. I didn't see the other page. I don't know if in effect it is the same as this one.

Testimony of Harry F. Potter

Mr. Stanley: Then I will withdraw it.

Q. With reference to sixteen it is different?

A. Yes.

Q. Sixteen was the one that you requested
92 the company to sign; wasn't it?

A. I didn't request it, no.

Q. Well, I am speaking of the committee; that is correct?

A. As far as I know, it was presented to the company and returned it to this management.

Q. I think you must know that.

Mr. Witt: I am sorry we haven't any copies of this and we can't—

Q. (By Mr. Stanley). Let me read it to—

A. I will admit that I signed this.

Q. Paragraph 16?

Mr. Witt: Excuse me, Mr. Stanley. We don't feel that your last question before the last one—

Trial Examiner Danaceau: May I suggest that the previous question be withdrawn and we start fresh on that paragraph?

Mr. Stanley: All right. Strike it out.

Mr. Witt: We want to catch up with you.

Trial Examiner Danaceau: This is off the record.

(Conversation had off the record.)

Q. Paragraph 16 in the agreement signed by you and the committee but not signed by the company—

Mr. Witt: We object to that question.

Q. In the drafting of an agreement, let us say—

Trial Examiner Danaceau: In a proposed agreement.

Q. —a proposed agreement identified by your
93 signature and the committee contained a Paragraph 16 reading as follows; does it not? "That George Carbeck, Senior and George Carbeck, Junior are discharged immediately as well as any of their relatives." Is that correct?

A. As far as I know.

Q. The agreement was finally executed and struck out George Carbeck, Senior and Junior and just required the discharge of the relatives of those men; isn't that correct?

A. No; that submission was rejected entirely by the management.

Mr. Stanley: Repeat my question.

(Last question read by the Reporter.)

Testimony of Harry F. Potter

Mr. Stanley: I think I am correct on that.

Trial Examiner Danaceau: Let me take charge of it.

Examination by TRIAL EXAMINER DANACEAU.

Q. (By Trial Examiner Danaceau). I think you misunderstood the question. The final agreement of June 15th changed the proposal of your committee that Mr. Carbeck, Junior and Mr. Carbeck, Senior and all the relatives be discharged, into this agreement whereby only the relatives be discharged. You understand that?

A. Yes.

Q. That is correct; is it not?

A. According to this agreement signed by Garry Sands and the four committeemen, that is correct.

94

Q. That is correct.

Trial Examiner Danaceau: That is correct. The Examiner feels this agreement speaks for itself.

Mr. Stanley: As far as that is concerned, I can withdraw that.

Mr. Witt: We want to call the Examiner's attention to the fact that George Carbeck, Senior and George Carbeck, Junior are to be discharged, and that was changed entirely.

Mr. Stanley: As well as their relatives.

Mr. Witt: Excuse me. I am sorry—

Trial Examiner Danaceau: The final agreement let the relatives be discharged and permitted the Carbecks to remain.

Mr. Witt: That's right.

Mr. Stanley: That's right.

CROSS EXAMINATION (Continued)

Q. (By Mr. Stanley). Now, who were the relatives?

A. How is that?

Q. Who were the relatives?

A. I think Schumann was one of them, and I think a brother-in-law—Schumann was the only one I knew.

Q. Now there were—one of these Carbecks was a foreman; wasn't he?

A. Considered a foreman, yes.

Q. Foreman of what department?

A. The machine shop.

95 Q. That was the younger one?

A. Yes.

Q. Carbeck, Junior was a foreman?

Testimony of Harry F. Potter

A. Yes.

Q. Now there were other foremen in the Sands shop in other departments who had relatives working for the company; were there not?

A. Might have been one or two; I don't know.

Q. All right. Now, were there any complaints then up until August 21st that you took up with the company?

A. No.

Q. Everything was fairly harmonious up to August 21st?

A. The committee handled all that. I didn't.

Q. You didn't pay any attention to it?

A. No.

Q. At any rate, there wasn't anything of importance to take you in there?

A. Nothing sufficient to take me in there. I don't like to disturb the management or employees.

Q. Your custom was to have the committee take care of it, let the committee take care of it?

A. Certainly. When I was shop steward, I didn't want an outsider in unless I couldn't get anywhere.

Q. At any rate, there was no dispute as far as you heard unless the committee wasn't getting any-
96 where, as you put it?

A. Well, they seemed to be getting along all right.

Q. And then you heard that the plant was shut down?

A. Yes.

Q. And you heard that on August 21st?

A. August 21st, 22nd, something like that.

Q. Well, you didn't call up the management?

A. No, wasn't the first time they closed down for a couple of weeks.

Q. That is, there had been dull seasons before when they shut down; is that right?

A. Yes.

Q. It is a seasonal business; isn't it?

A. Well, possibly somewhat but not a seasonal business, but there is always orders coming in.

Q. I understand there aren't spring and fall styles as in the garment trade. There is a slackening in the fall?

A. Don't change models.

Q. There is a slackening in the spring and fall in the heater business?

Testimony of Harry F. Potter

A. In the summer.

Q. In the summer.

Mr. Witt: To save time, we will concede that the plant closes down in some seasons.

Trial Examiner Danaceau: We have gone over that.

97 Q. I am coming now to the close of this thing, when it was closed down. You made no approach through the company at all?

A. No.

Q. The only time you did make an approach was on the occasion when you heard that the company had signed a contract with the A. F. of L.?

A. Yes.

Q. You were vitally interested there?

A. Certainly.

Q. All right. You telephoned Mr. Sands?

A. Yes.

Q. You told us what he said?

A. Yes.

Q. Then you established pickets?

A. Yes.

Q. And that picketing continued how long?

A. Oh, probably ten days, two weeks maybe. Some scattered men around there for a month after that.

Q. But the picketing was officially recognized for a couple of weeks at any rate?

A. Oh, longer than that. We knew what was going on all the time.

Q. The M.E.S.A. stationed pickets there for how long?

A. Oh, probably a month.

Q. Probably a month. You were there at times officially supervising the pickets?

98 A. Oh, I stopped by and talked to them.

Q. Still you didn't come in to see Mr. Sands?

A. No.

Q. Now, just what is the M.E.S.A.? Is it a voluntary association?

A. An independent labor organization.

Q. An independent labor organization?

A. Yes.

Q. Where is its headquarters?

A. The national headquarters are at Detroit, Michigan.

Q. Who are its officers?

A. Jim Murdock is President; Secretary is Ma-

Testimony of Harry F. Potter

thew Smith; William Sheehan is National Treasurer and National Executive Board Member; James Miller, National Executive Board Member, Chris Barnard, National Executive Board Member, Chris Anderson, National Executive Board Member.

Mr. Witt: You want all those, Mr. Stanley?

Mr. Stanley: That is enough I think.

Q. (By Mr. Stanley). All I am getting at is that this is an organization of national scope with an independent labor organization here with headquarters at Detroit. Are you a member of the independent organization?

A. I am a national board member.

Q. Now, I call your attention to this drafted form of contract—I will withdraw that. Let me prepare these. In your drafted form of contract, I call 99 your attention to Paragraph 6.

Trial Examiner Danaceau: The drafted form; you referred to it as the proposed form.

Q. (By Mr. Stanley). The proposed form I should say, you had—reading this—did you not, “That when one department is shut down, men from this department will not be transferred or work in other departments until all men within that department who were laid off have been called back.” That is the wording of your proposal?

Mr. Witt: That is the same thing. That is the present.

Mr. Stanley: Yes. You had that. Withdraw that.

Q. (By Mr. Stanley). Yes, your proposal was that when one department is shut down, the men from this department will not be transferred or work in other departments until old men in that department that were laid off in that department were called back; that was your proposal?

A. Yes.

Mr. Witt: You know the instrument that he was reading from?

Mr. Stanley: Reading from the proposed contract.

Mr. Witt: Give the Reporter the date.

Trial Examiner Danaceau: The proposed contract began at a later date and entered into on a prior date.

Mr. Witt: We will call it the proposed contract.

Trial Examiner Danaceau: It began June 1st, 1935 to January 2nd, 1935; which was less than zero.

Testimony of Harry F. Potter

100 Mr. Stanley: This goes to March, 1936.

Trial Examiner Danaceau: There was a typographical error.

Mr. Stanley: It must have been a typographical error.

Trial Examiner Danaceau: I don't think we have to go any further into that. It is obvious they put into the final agreement that was not in the original proposal.

Mr. Stanley: That's it.

Trial Examiner Danaceau: Proceed.

Q. (By Mr. Stanley). Who has the roll of your members?

A. Who has what?

Q. The roll of the members of your union, I mean your Local union, particularly those who are employed by The Sands Manufacturing Company in the spring of this year?

Mr. Witt: Now, before that is answered, we will call the official of the Local.

Trial Examiner Danaceau: He is simply asking what their names are.

Mr. Stanley: Let us cut across lots.

Q. (By Mr. Stanley). Will you produce it?

Mr. Witt: Yes, that is what I am trying to say.

Mr. Stanley: That is all.

Trial Examiner: Just one question before this witness is excused at this time. What is your Local number, 24?

Mr. Witt: Number Twenty-two.

101 Trial Examiner Danaceau: Twenty-two. What area does that take in?

The Witness: The south end of Cleveland.

Trial Examiner Danaceau: It doesn't merely include the Sands Company but various shops in the geographical union it comprises?

Mr. Witt: We will prove all that by the official of the union. Let me take that on direct.

Trial Examiner Danaceau: Well, we will take a five minute recess at this time.

(Recess had.)

RE-DIRECT EXAMINATION

Q. (By Mr. Witt). Mr. Potter, I show you this proposed agreement that you were discussing a few minutes ago, and it is signed by these four members of the committee, was it not?

Testimony of Harry F. Potter

A. Yes.

Q. This proposal was given to the company during what period? Was it after your conference with the Conciliator Rogers?

A. It was after.

Q. It was after that?

A. It was after that second strike.

Q. This was given to the company after that second strike?

A. Yes.

Q. And that conference between June 7th, when the men went, or June 3rd, when the men went back the first time, you discussed various proposals with
102 the management?

A. Yes.

Mr. Smoyer: I object. He was not in these.

Mr. Witt: Yes, he was there. He testified that is the one.

Mr. Smoyer: Before the second strike?

Mr. Witt: That's right.

Mr. Smoyer: Then I misunderstood him.

Q. You were present on this conference on or about May 21st that was between the committee and the Conciliator Rogers and the management?

A. Yes.

Q. Various proposals were submitted?

A. Yes.

Q. This agreement was submitted after the men went back the second time?

A. After they struck the second time.

Q. After they struck the second time but before they came back the second time?

A. Yes.

Mr. Stanley: No. Wait a minute. They came back the third time.

Mr. Witt: The men only came back twice. They came back on June 3rd and June 17th. What is the third time, Mr. Stanley?

Mr. Stanley: That's right. You are right.
103 That's correct.

Q. And this proposal was submitted to the management after the men came back the first time?

A. Yes.

Q. On June 3rd?

A. Well, after they had run out on the strike the second time.

Testimony of Harry F. Potter

Q. Yes. Did this proposal represent an attempt by your committee to embody the agreement you had reached with the management at that conference with Conciliator Rogers?

Mr. Stanley: I object. It couldn't be. It is not objectionable only because it was leading, but he wasn't at the conference.

Mr. Witt: He was; he testified so.

Mr. Stanley: Not after the second strike.

Mr. Witt: Let me clarify it.

Q. (By Mr. Witt). The men went out the first time on or about May 21st?

A. Yes.

Q. There was a conference thereafter; was there not?

A. Two.

Q. The first conference was the one attended by Conciliator Rogers?

A. The first one?

Q. Yes.

A. The second.

104 Q. That conference with Conciliator Rogers was held on or about May 31st?

A. About that time.

Q. That is the Thursday or Friday before the men went back to work on June 3rd?

A. Yes.

Q. That is what you testified. At that conference various proposals were discussed with the management; were they not?

A. Yes.

Q. You approved this proposal together with the committee; did you not?

A. Yes.

Q. In drafting this proposal, did you attempt to embody in the proposal the various things agreed upon between yourself and the management at that conference with Conciliator Rogers?

Mr. Stanley: I object to that. He testified exactly opposite. He said they attempted to draft it and then they struck.

Trial Examiner Danaceau: The question is whether the proposed agreement that the company did not accept was embodied, the terms that were really agreed upon in that conference with the Federal Conciliator which they had attended?

Testimony of Harry F. Potter

A. I hadn't completed the agreement we had made when Conciliator Rogers sat in. I hadn't completed the writing of that agreement when they walked out on the strike, so the committee came to the office and they wanted changes to be made because they claimed the management had broken the agreement and wanted a new agreement under the contract. That is the answer.

Q. You testified that at this same conference we are talking about, the one attended by Conciliator Rogers on or about May 31st, that the company proposed that five men be discharged; is that correct?

A. Regarding that proposal, seven.

Q. Yes. We talked about five.

A. Yes.

Q. You talked about five later?

A. I talked about all seven of them.

Q. It was finally agreed that the management would rest the issue of discharge at that conference?

A. Yes, after they came back to work.

Q. At that conference you agreed that at least three or four or five might be incompetent?

A. Yes.

Q. Did you agree to a discharge without a hearing before the committee?

A. No.

Q. You are sure about that?

A. Yes.

Q. In other words, you agreed that while they may be incompetent the manager had no right to discharge them without a hearing?

Mr. Smoyer: I object.

Trial Examiner Danaceau: That has been so testified.

Mr. Witt: Withdraw that question.

Q. (By Mr. Witt). You testified that in November, 1934, I believe, that the company was about to hire additional men to work on the Government order?

A. Yes.

Q. And did I understand you to testify that at that time Mr. Garry Sands approached you or the committee and asked you not to strike while the plant was engaged on this Government order?

Mr. Smoyer: I object. He so testified.

Trial Examiner Danaceau: He is merely asking whether he testified.

Testimony of Harry F. Potter

A. He asked us to promise him he wouldn't have labor troubles.

Q. You gave him that promise?

A. I promised if he gave us time and a half for overtime.

Q. Did Mr. Sands at the time ask you to include in any event a provision by which the M.E.S.A. would agree not to strike?

A. No.

Q. He never asked you to include a so-called no-strike provision?

A. No.

Q. In any agreement?

107

A. No.

Q. You also testified that it was agreed between the committee and the management that none of the men would be discriminated against when they were taken back after the first strike; is that your testimony?

A. They would be all taken back without discrimination.

Q. They would all be taken back without discrimination, and by all being taken back, you mean all the members—

Mr. Smoyer: I object.

Mr. Witt: Withdraw that question. I withdraw it.

Q. That agreement applied to the members of the M.E.S.A.; did it not?

Mr. Smoyer: I object. The agreement speaks for itself.

Trial Examiner Danaceau: This is an oral agreement had at the first strike on June 3rd, went back on June 3rd.

Mr. Smoyer: The one that was never reduced to writing?

Mr. Witt: That's right.

Q. (By Mr. Witt). Was Harry Gassell a member of the M.E.S.A.?

A. Yes.

Q. And he had been expelled?

A. Yes.

Q. About when was he expelled, do you remember? Was it before June that he was expelled?

A. No; it was during the spring. In May, yes.

Q. In May that he was expelled?

108

A. Yes.

Q. And Milburn Moritz, ever been a member of the M.E.S.A.?

Testimony of Harry F. Potter

A. Yes.

Q. Has he been expelled?

A. Yes.

Q. At or about the same time Gassell was expelled?

A. Yes.

Q. You testified that on or about August 21st that you heard about the plant being closed?

A. Yes.

Q. Did you hear at that time why the plant had been closed down?

Mr. Smoyer: I object.

Trial Examiner Danaceau: Well, of course, it is hearsay, but under the relation here, if he knows, he may answer.

Mr. Witt: Well, he testified that he heard that the plant was closed. That was hearsay.

Mr. Smoyer: If I may make a suggestion, you are going to have the committeemen here and we are going to have Mr. Sands testify as to the exact negotiations which led up to the—

Trial Examiner Danaceau: If we can avoid hearsay, that is the best thing to do. I think for the time being it isn't necessary.

Q. (By Mr. Witt). Did you at any time after September 4th, as State Chairman of the M.E.S.A.,
109 or any other official of the M.E.S.A., officially appear and declare that the plant of the Sands Manufacturing Company be not picketed?

A. No.

Q. You never officially declared that the plant be not officially picketed?

A. No.

CROSS EXAMINATION

Q. (By Mr. Smoyer). Why was Gassell expelled from the M.E.S.A.?

A. Because he turned rat.

Q. What?

A. Because he turned rat.

Q. Because he refused to picket; isn't that it?

A. He said he would come over there and clean out the whole picket line.

Q. How about Moritz; he refused to picket?

A. He didn't refuse to picket.

Q. What?

A. He didn't show up on the picket line and didn't pay his dues.

Testimony of Joseph Blaha

Q. He was discharged for that reason?

A. He wasn't discharged.

Q. Or expelled?

A. Yes.

Q. Now, all the rest of the employees who were members of the M.E.S.A. at the time had paid
110 up their dues?

A. Yes.

Q. At that time?

A. Yes.

Mr. Witt: We already said we will produce the book.
Trial Examiner Danaceau: It is merely cross examination.

A. As far as I know, I am not financial secretary.

Q. You don't know anything about it?

A. Somebody does.

Q. You will have the book show it?

A. The financial secretary will.

Mr. Lodish: At this time, Mr. Examiner, I would like to call some of the general body of witnesses and see how we will get along with them. I will take them alphabetically. Is Tony Avon here? I think I have exactly nine questions to ask each one and see how that works out.

Trial Examiner Danaceau: I take it the witnesses you are now calling is for the purpose of showing what they have done since their non-employment?

Mr. Lodish: Yes; that is one or two questions to tie up the whole thing.

JOSEPH BLAHA,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Lodish). Will you state your name, address to the Reporter please?

111 A. Joseph Blaha, 2927 East 37th Street.

Q. Now were you an employee of The Sands Manufacturing Company?

A. I was.

Q. Are you a member of the M.E.S.A.?

A. I am.

Q. Were you a member when you were working there?

Testimony of Joseph Blaha

A. I was.

Q. Do you remember when you were first employed at The Sands Manufacturing Company?

A. I don't.

Q. If I were to tell you that you were first employed May 5th, 1928, would that strike you as being correct; May '28? Does that sound all right?

A. I couldn't say.

Trial Examiner Danaceau: About how many years have you worked there?

The Witness: About nine.

Trial Examiner Danaceau: About nine years?

Mr. Smoyer: How many?

The Witness: Nine.

Q. (By Mr. Lodish). Now when were you laid off?

A. August 21st.

Q. What year?

A. 1935.

Q. And where did you work, in what department?
112

A. In the coil room.

Q. Have you ever worked in any other department?

A. Yes, sir.

Q. What other department?

A. Machine shop, tank department.

Q. Any other?

A. Automatic department, machine tin shop.

Q. Any other?

A. Shipping Room.

Q. Any other?

A. That's all.

Q. Since you have been laid off, have you earned any money?

A. I have earned five dollars, to be frank.

Q. Altogether?

A. That's altogether.

Q. How did you earn that?

A. Repaired my brother-in-law's machine.

Q. Anything else?

A. No.

Q. Are you working now?

A. I am not.

Q. Have you received any relief since you were laid off?

A. I have.

Q. How much would it total to?

A. It would total to ninety-four dollars.

Testimony of Joseph Blaha

113 Q. Is that an estimate of yours or exactly right?

A. Just an estimate.

Q. Just an estimate. Have you any way of telling exactly what the amount is?

A. I have the receipt at home; I can't tell you right now.

Trial Examiner Danaceau: How much a week?

The Witness: Eight seventy-five for the first time; received fifteen ninety-five once.

Trial Examiner Danaceau: For every two weeks?

The Witness: Every two weeks.

Q. (By Mr. Lodish). Semi-monthly?

A. About thirty-two dollars a month.

DIRECT EXAMINATION

(By Mr. Witt). And this included coal and clothing?

A. Coal and clothing.

Q. After you were laid off, did you ever go back to ask for your job?

A. Never did.

Q. Why didn't you?

A. Never got a notice to come back.

Q. What did you think, you were going to get a notice to come back?

A. That's what was the only way. I never did get a notice to come back. Always saw the other fellows always received cards to come back.

114 Q. Were you ever given notice when you were laid off?

A. No.

Q. Did you see any notice?

A. There was notice on the clock saying this factory would close down until further notice.

Mr. Witt: That is all.

Trial Examiner Danaceau: Any questions?

CROSS EXAMINATION

Q. (By Mr. Smoyer). Are you working in the coil room?

A. I did.

Q. What sort of work is that?

A. Run a coil machine.

Q. What kind of a machine is that?

A. That makes hot water coils for hot water heaters.

Q. These are circular coils that go inside of a heater?

Testimony of Joseph Blaha

A. Yes, sir.

Q. Not a trained machinist?

A. No.

Q. What was the last department you worked in?

A. The machine shop.

Q. When did you go in there?

A. I couldn't say when I went in there.

Q. Along about this summer it was?

A. How?

Q. This summer?

115 A. I was there this summer before I got laid off.

Q. I mean that is the time you were in the machine shop?

A. Yes, I was in there.

Trial Examiner Danaceau: The question is how long were you in there?

The Witness: That I couldn't say.

Trial Examiner Danaceau: Approximately?

The Witness: Two weeks.

Q. (By Mr. Smoyer). That's right. You were classified as what?

A. Classified?

Q. Yes, classified on the coil machine?

A. Coil machine.

Q. Now, the men who worked in the machine shop were classified as what, machinists and machine helpers?

A. Well, I couldn't say exactly. I suppose they were.

Q. Yes. Now, when the strike occurred in May, you received a notice to come back to the company or just heard that the shop was going to open?

A. I never received a notice.

Q. You didn't receive any notice?

A. No.

Q. You came back on June 5th or about that?

A. About that.

116 Q. And your men worked two or three days and struck again?

A. Something like that.

Q. When you came back again, did you receive a notice?

A. No.

Trial Examiner Danaceau: Speak up louder please.

Q. (By Mr. Smoyer). Now, you remember back in June or May, possibly, what your demands were then, what you were out on strike for?

Testimony of Joseph Blaha

A. Well, we was out, I believe, for better working conditions.

Q. What were they?

A. What were they?

Q. Yes.

A. More money.

Q. How much?

A. Well, I was getting—

Q. No; not what you were getting. What were you demanding?

A. Two and a half cents.

Q. What?

A. Two and a half cent's, something like that.

Q. Is that what you were demanding?

A. Yes, something like that.

Q. Is that what you got rather than what you demanded?

Trial Examiner Danaceau: You are referring, I take it, to the first time?

Mr. Smoyer: Yes, the first strike.

A. The first strike?

117 Q. Well, without further waiting, you don't remember?

A. No; I don't quite remember.

Q. You don't remember what the demand was?

A. I don't quite remember.

Q. And finally when it was settled what did you get?

A. Well, we went back in June.

Q. On what terms did you go back?

A. Well, we went back for our—I guess we got our raise then.

Q. How much did they raise the amount to?

A. Two and a half cents.

Q. What was the other dispute at that time?

A. Well, there were several men out and they were supposed to come back too. At the time we went back, they didn't go back, so we went out.

Q. Was there any discussion as to whether those men were to be kept out?

A. I couldn't exactly say.

Q. Never reported to you at the M.E.S.A. meetings that there was any difference between those men and anybody else?

A. I couldn't say. I didn't attend most of the meetings.

Q. Didn't you?

Testimony of Joseph Blaha

out to the country, used to go out to the country with my folks.

118 Q. Did you attend any meetings during that first strike?

A. I believe I did.

Q. There wasn't any discussion at those meetings about any of those men not being returned because they were inefficient?

A. I couldn't say.

Q. You don't remember, you mean?

A. No; I don't remember.

Q. Do you remember anything about any men who were to come up for a hearing because they were inefficient?

A. Yes, there was, I believe, a few.

Q. Who were they?

A. I don't know. I don't just remember their names—Jack Ratchford. I can't remember the other fellows' names.

Q. They never did come up for a hearing, did they?

A. I couldn't say.

Q. You don't know anything about it?

A. (No answer).

Q. Had you had any previous experience in the machine shop until last summer?

A. I never worked in the machine shop.

Q. Not at all?

A. Not at the Sands. Just at Sands the only time I worked at the machine shop.

Q. Just these two weeks?

A. No; I worked there before.

119 Q. I beg your pardon.

A. No; I worked there before.

Q. How long ago?

A. I was working in the machine shop off and on when there was no work on the coil room.

Q. This was in the last year?

A. The last year. The year before, I worked there on and off.

Q. This year and the year before?

A. Yes, sure.

Q. You worked under what foreman?

A. Why, I worked under Bill, under George Carbeck, and I worked under—I can't remember the other boss's name again.

Q. Well, if you don't know, it isn't important. Did you picket?

Testimony of Joseph Blaha

A. Yes, sir.

Q. You picketed in May?

A. Yes, I did.

Q. You picketed in June?

A. I did.

Q. You picketed in this third strike?

A. I did.

Q. And you know about a fellow by the name of Gassell; do you know him?

A. I don't recall the—

Q. What?

A. I don't know the fellow by the last name.

120 Q. Harry?

A. Harry Gassell?

Q. Yes.

A. No, sir; I don't know him.

Q. What?

A. I don't know him.

Q. You don't remember any such fellow being discharged?

A. No.

Q. Do you remember a man by the name of Moritz?

A. Moritz?

Q. Moritz, Milburn Moritz?

A. No.

Q. You don't know anything about his being expelled from the union?

A. No.

Q. Or anything about Harry Gassell being expelled?

A. I remember him; I believe I recognize him now.

Q. What was his nickname?

Mr. Witt: Did you call him Hank Gassell?

The Witness: Hank Gassell?

Trial Examiner Danaceau: The Witness is not very clear on that.

Q. (By Mr. Smoyer). You don't remember anything about those two men being expelled?

A. One fellow I remember being expelled.

121 Q. For not picketing?

A. He said he would go with the Sands Company if he had the men to back him.

Q. Go back to work?

A. Yes, sir.

Mr. Smoyer: That is all.

Testimony of Joseph Blaha

RE-DIRECT EXAMINATION

Q. (By Mr. Lodish). Just one question. You were laid off August 21st?

A. Yes, I was.

Q. Were you ever laid off before that?

A. Temporary or—

Q. Well, in any way, were you ever laid off before the 21st?

A. No.

Q. So you never had occasion to get a card?

A. No.

Q. Can you tell us when you first worked in the machine shop and how long ago?

A. When I first started working there?

Q. Yes.

A. In the machine shop.

Q. When was it you first started to work in the parts shop?

A. I couldn't say.

Q. Trial Examiner Danaceau: How many years ago?

122 The Witness: I have been working on and off for the last three years, maybe more.

Mr. Witt: That is all.

RE-CROSS EXAMINATION

Q. (By Mr. Smoyer). When was the slack season of the year, if there was a slack season?

A. Well, it generally always starts about August, September, and sometimes it is a good season in August and September. Generally the hard season is in December, January, and February.

Q. A year ago there was a slack season in August when you were only working a half a week or three days out of a week?

A. I believe there was. I know there was a slack season in January.

Q. There was one in August; wasn't there?

Mr. Witt: Of what year?

Mr. Smoyer: 1934.

A. I couldn't say.

Q. August, 1934?

A. I couldn't say.

Mr. Smoyer: Our books will show it. It is the best evidence.

Mr. Lodish: Shall we continue this way?

Trial Examiner Danaceau: Yes.

*Testimony of William Brandt***WILLIAM BRANDT,**

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

123 Q. (By Mr. Lodish). Will you give us your name and address?

A. William Brandt, 9519 Orleans Avenue.

Q. Now, were you an employee of the Sands Manufacturing Company?

A. Yes, sir.

Q. Are you a member of the MESA?

A. Yes, sir.

Q. Were you a member of the MESA when you worked at The Sands Manufacturing Company?

A. Yes, sir.

Q. Now can you tell me when you were first employed there the very first time?

A. About 1921 or '22; I couldn't say.

Q. January 28, 1921?

A. Something like that, yes, sir.

Q. When were you laid off?

A. On August 21st this year.

Q. What department were you classified as?

A. Stock room.

Q. Did you ever work in any other department?

A. I worked in the machine shop.

Q. Any others?

A. No. I probably helped in different departments occasionally.

124 Q. Nothing consistently?

A. No.

Q. Except the stockroom and the machine shop?

A. Yes.

Q. Have you earned any money since you were laid off?

A. No, sir.

Q. Have you received any relief since you were laid off?

A. No, sir.

Q. Have you ever gone back for your job since you were laid off?

A. No, sir.

Q. Why didn't you?

A. One of the committeemen at the time we were laid off—we didn't know definitely how long. I hap-

Testimony of William Brandt

pened not to be home one day there when one of the committeemen came and told my wife I was to report to a meeting the following day.

Q. When was that?

A. On or about September 5th.

Q. That is the day of the meeting?

A. Yes, sir.

Q. Did you go to that meeting?

A. Yes, sir.

Q. And that was a meeting of whom?

A. Of the employees of the Sands Manufacturing Company.

125 Q. Who was that called by, do you know? Who took charge of the meeting?

A. The MESA.

Q. What individual?

A. The committeemen.

Q. Who took charge of the meeting? What person was the head of the meeting, do you remember off-hand?

A. Harry Potter.

Q. Harry Potter?

A. Yes.

Q. What reference does that have to your not going back?

A. Well, my understanding was we were out, definitely discharged.

Q. What?

A. That we were discharged; all of the members of the MESA.

Q. You got that information when?

A. At the time of the meeting.

Q. At the time of the meeting. Did you picket later?

A. Yes.

Q. Now how did you get paid; that is, on an hourly basis or on a salary?

A. Well, I was on a salary.

Q. How long ago was that?

A. Before we joined the union.

Q. That is before 1934?

A. Yes.

Q. How did you get paid after that?

126 A. On an hourly basis.

Q. What are you classified as? Are you a laborer or—

A. I was classified as a keyman and classified by the superintendent as a foreman.

Testimony of William Brandt

Q. Were you always called a foreman?

A. Yes, sir.

Q. Did you have a right to hire or fire?

A. I had no right to hire and no right to fire.

Q. And no right to fire?

A. No.

Q. Did you have the right to recommend firing people?

A. Yes, sir.

Q. As foreman, you had a right to recommend somebody being fired?

A. Yes, sir.

Q. Did you get an increase in 1934 after the agreement?

A. I believe so; yes, sir.

Q. How about 1935; the agreement in June? Did you get an increase under that agreement?

A. Yes, sir.

Q. As foreman, did you or did you not work with your men?

A. I did.

Q. You worked with your men, right in with your men?

A. Yes, sir.

Mr. Lodish: That is all.

127 Trial Examiner Danaceau: Just a minute. Will there be any additional evidence as to what these men were earning weekly when their employment ceased? Instead of asking each one separately, will you have any evidence submitted by way of a summary?

Mr. Witt: We think that the best way to get that is to get the company to include on this list—we didn't ask them. That is our fault. We are not asking these people now because we asked the company to produce that later on.

Trial Examiner Danaceau: It will save a lot of time.

Mr. Smoyer: We can put on this list the hourly rate.

Trial Examiner Danaceau: The hourly rate they were receiving and then show the time they were employed?

Mr. Witt: Yes, and the time laid off.

Trial Examiner Danaceau: Then it is not necessary to ask each witness these questions. We will get the information later.

Testimony of William Brandt

CROSS EXAMINATION

Q. (By Mr. Stanley). Mr. Brandt, you were foreman in the stock room?

A. Yes, sir.

Q. We are lawyers here and we might not know what the stock room is; what did you do in the stock room?

A. Assembled parts. Assembled or building up hot water heaters.

Q. The first thing you did is to keep a sort
128 of store room of parts; is that right?

A. That's right.

Q. And when one department wants some parts, you parcelled those out to the department and kept a record of it?

A. Yes, sir.

Q. A good deal of clerical work of keeping a record of the amount of parts on hand; is that right?

A. Well, to a certain extent.

Q. That is part of the work, I mean?

A. Yes, sir.

Q. Now how many people are working in the stock room?

A. Well, at times I had five or six, all depending; one or two, all depending on the work there was.

Q. I see.

A. We were busy, we had more employees in the stock room; and if not, had less.

Q. What was the rest of the work outside of keeping the stock?

A. Assembling.

Q. Well, you didn't assemble all the heaters?

A. No; just parts to fit these heaters.

Q. That is, you assembled a few parts together?

A. Yes.

Q. But you didn't assemble the entire heater in the stock room, of course?

129 A. No, sir.

Q. Well, what is the work of the machinist at the Sands Manufacturing Company?

A. Sir?

Q. What is the work of the machinist at the Sands Manufacturing Company, a man working in the machine room doing machine shop work at the Sands Manufacturing Company; what kind of work does he do?

Testimony of William Brandt

A. At the machine shop?

Q. Yes.

A. Why, they turn down rough castings to make them fit for the assembly.

Q. That is, grind them?

A. Yes, sir; grind them, drill them.

Q. What else do they do in the machine shop?

A. That is the line of work, tool room work.

Q. Tool room work?

A. Tool maker up there.

Q. What kind of machines do they work with?

A. Lathe, milling machines, screwing machines, drill presses, and grinders.

Q. The workmen there are all machinists and machinists helpers; is that right?

A. If you call them that way.

Q. It is more of a machinist's job than it is
130 of any other class; isn't it?

A. That understanding, some way or another to do the work.

Q. That is, you have to have knowledge of how to run a machine?

A. Yes, sir.

Q. How to run a lathe, a screw machine?

A. A lathe is a trade, I believe.

Q. I beg your pardon?

A. A lathe is a trade.

Q. Yes. When was the last time you worked in the machine shop?

A. About five years ago.

Q. You haven't worked there since?

A. No.

Q. Now, you remember when this shop went on strike in May?

A. Yes, I do.

Q. And you attended the meeting of the M.E.S.A. before the strike?

A. Yes, sir.

Q. And that was a meeting, say in the morning, and the strike was called at noon; is that right?

A. Yes, sir.

Q. And the dispute there was over an increase in wages; wasn't it?

A. Yes, sir.

Q. And that increase was how much that was asked?

A. I believe we asked for ten percent.

Testimony of William Brandt

131 Q. Ten percent. It really wasn't five cents an hour?

A. Something like that.

Q. You don't recall that?

A. I don't recall that. I wouldn't say.

Q. It was finally settled on what basis?

A. Two percent or two cents.

Q. It may be that approximately?

A. Yes.

Q. What was there about the men the company claimed were incompetent or to be allowed to discharge them? Was there some talk of that?

A. Will you repeat that?

Q. Was there some talk about the company asking to have discharged some men?

A. Yes.

Q. I see. There were some five men?

A. Well, I believe it was five or six. I can't tell you offhand.

Q. Then did you know those men, Mr. Brandt?

A. I knew them by being employed there.

Q. They worked under you?

A. I don't believe so.

Q. You think not?

A. No.

Q. Well, you only had four or five under you?

132 A. Yes.

Q. Your men were perfectly competent men, your fellows were always?

A. Yes.

Q. So the men didn't work under you?

A. I don't believe they did.

Q. You understood that before the company could fire anybody they had to get the consent of the shop committee?

A. I believe that was the agreement.

Q. You believe that was the agreement?

A. Yes.

Q. If both the shop committee and the management didn't agree, then what?

A. I couldn't tell you about that. That was up to the committee. I had nothing to do with that.

Q. Do you understand that if the committee didn't agree; to go out on strike?

Mr. Witt: I object to that.

Q. (By Mr. Stanley). I meant that if the committee didn't agree to discharge any of the men and

Testimony of William Brandt

the company insisted upon it, what was then done?

A. Repeat that question.

Q. Did you understand that the company could not discharge any employee without the consent of the committee?

133 A. Yes.

Q. You did?

A. Yes.

Q. Where did you get that information from, from the union officers of the M.E.S.A.?

A. The committeemen.

Q. The committeemen; who were they?

A. Well, there was Lada Jindra, Frank Pansky, and Tony Moraco, and Clarence Dusek.

Q. They told you that?

A. Yes, sir.

Q. That was the cause of the second strike then; wasn't it?

A. Yes, sir.

Q. Because some of these men the company wanted to fire and the committee knew people that didn't agree to it; is that it?

A. It wasn't me. It was the committee.

Q. The committee?

A. Yes.

Q. And that was why you struck the second time?

A. Yes.

Q. You voted for the strike for that reason?

A. I didn't vote for the strike.

Q. Did you vote against it?

A. I did at the first strike.

Q. How about the second strike?

A. I didn't know anything about it until I
134 was notified.

Q. How about the second strike?

A. I didn't know anything about it until I was notified.

Q. By whom?

A. By the committee.

Q. You didn't have a meeting for that second strike?

A. No.

Q. What did the committee report to you?

A. What is that?

Q. What did your committee report to you about that second strike?

A. Well, I just didn't happen to be there that

Testimony of William Brandt

morning, but in time they told me something about re-hiring the five men.

Q. Just what was said about that?

A. That is about all.

Q. But what did they say, that the company insisted that these men should be discharged; was that it?

A. Yes.

Q. And the committee would not agree to it?

A. Yes.

Q. And thereafter, was there a strike?

A. What is that?

Q. Was there a strike vote?

A. Not to my knowledge.

Q. Did you ever hear of one?

A. Yes.

135 Q. I mean for that second strike, was there a strike vote?

A. Not that I remember.

Q. You never heard of one?

A. I didn't hear it.

Q. Well, now, there is something here in the settlement of the second strike that Carbeck's relatives were to be barred out; did you hear about that?

A. Yes.

Q. Well, Carbeck was a foreman?

A. Yes.

Q. You are a foreman?

A. Yes.

Q. Did you ever have any relatives working there?

A. Yes, I did.

Q. Good workmen?

A. Yes.

Q. You didn't believe in barring men from working because they were relatives of a foreman; did you?

A. No.

Q. Was there any objection to that?

A. Well, I couldn't say.

Q. Did you hear about that?

A. Did I hear about that?

Q. Yes.

A. Yes, I did.

136 Q. You did?

Mr. Stanley: I think that is all.

Trial Examiner Danaceau: That is all.

Q. (By Mr. Stanley). Wait a minute. How many relatives did you have working there?

Testimony of William Brandt

A. At one time or what? How do you mean? This last time?

Q. At any time.

A. I had two brothers and a father.

Q. At what time was that?

A. About six years ago.

Q. And lately what did you have?

A. Just another relative.

Q. One of your brothers?

A. Yes.

Mr. Stanley: That is all.

Trial Examiner Danaceau: Call one more witness please.

Mr. Stanley: I do want to ask this man one more question from where he is standing.

Q. (By Mr. Stanley). You testified on direct, I see from my notes here that you had a right to hire but not to discharge; is that it?

A. Well, I will give you the explanation on that on hiring—

Trial Examiner Danaceau: Better get up here on the stand.

A. In hiring, H. J. Sands done the hiring, but in recommending any firing, I did.

137 Q. Who did you recommend it to?

A. To Mr. Sands.

Q. Did you have occasion to recommend during the last year?

A. Yes.

Q. A discharge?

A. Yes, sir.

Q. You recommended that to Mr. Sands?

A. Yes. If the party was not satisfactory to the men.

Q. What?

A. If the man was not satisfactory, I recommended it to Mr. H. J. Sands.

Q. Who was it you recommended to be discharged?

Trial Examiner Danaceau: What is the name of the man you recommended to be discharged?

Q. (By Mr. Stanley). In the last year?

A. During this last period? Just previous to the layoff; is that it?

Trial Examiner Danaceau: Yes.

Q. (By Mr. Stanley). Well, let us say for the last year. I don't know what you mean by the last period; a year ago last summer?

Testimony of William Brandt

A. There was some.

Q. Can you recall anybody that was discharged from your department during the last year?

A. Well, I can't recall the name, but there
138 was one I told Mr. Sands about and he transferred him to another department; that is all I know.

Q. But he was not discharged from the shop?

A. No.

Q. Can you remember who that man was?

A. Yes.

Q. Who was he?

A. A fellow by the name of Mason.

Q. What is his first name?

A. I couldn't tell you.

Q. What department did he go to?

A. I believe he went to the machine shop. I couldn't say definitely.

Q. What was the reason you gave for wanting him discharged?

A. Why, his work was not satisfactory.

Q. Was he incompetent?

A. Yes; he was lagging, slow.

Q. Well, does the work in your department require more or less skill than in the machine shop?

A. No.

Trial Examiner Danaceau: By that you mean less skill?

The Witness: Yes.

Q. (By Mr. Stanley). It requires less skill?

A. Yes. Pardon me.

Q. Can a man be at least as fast in the machine shop as in your department?
139

A. I can't say about that. He had to keep up to keep the assembly department going to keep up the storage department. We have to keep the stock up to keep those fellows running.

Q. It requires a higher degree of skill in the machine shop?

A. Yes.

Q. Than in your department?

A. I believe so.

Q. Have you any idea why he was taken over to the machine shop?

A. I say I can't say definitely whether that man went to the machine shop or not.

Testimony of Edward Stack

Q. At any rate, he was not a good enough man for you?

A. I don't think so.

Q. Was he a M.E.S.A. man?

A. I couldn't tell you. I never asked a man whether he is an M.E.S.A. or whether he was no member at all.

Q. I see. Of course, in your time in the shop you know that you have incompetent men and in that shop that were incapable of doing the work in the right sort of manner; haven't you?

A. Yes.

Mr. Stanley: That is all.

DIRECT EXAMINATION

Q. (By Mr. Witt). Bill, there are a couple of other questions I want to ask you. You testified a
140 minute ago that you had worked in the machine shop from time to time in the past?

A. Just off times.

Q. Just off times?

A. It was real slow and we were asked to make tank samples.

Q. In the machine shop?

A. Yes.

Q. You worked in the machine shop?

A. Yes.

Q. Did you have any trouble in the machine shop?

A. No.

Q. Did anybody complain to you about the work you did in the machine shop?

A. No.

Mr. Witt: That is all.

Mr. Stanley: That is all.

EDWARD STACK,

called as a witness by the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Lodish). Will you state your name and address please to the Reporter?

A. Ed Stack, 6803 Hope Avenue.

Q. Were you an employee of The Sands Manufacturing Company?

A. Yes, I was.

Q. You are a member of the M.E.S.A.?

A. Yes, sir.

Testimony of Edward Stack

141. Q. Were you a member of the M.E.S.A. when you were working there?

A. Not when I started there.

Q. Were you a member of the M.E.S.A. before you were laid off?

A. Yes, sir.

Q. Do you remember when you first started working at The Sands Manufacturing Company?

A. That's about eleven years ago.

Q. If I asked you whether you started working there in 1930, would you say that is wrong?

A. That is only—

Q. That is only five years ago?

A. That's wrong.

Q. That is wrong. You worked there longer than that?

A. Yes.

Q. And when were you laid off?

A. The 21st of August.

Q. Of what year; this year?

A. This year.

Q. What department did you work in?

A. Machine shop.

Q. Now, have you earned any money since you have been laid off, Mr. Stack?

A. No.

Q. Have you gotten any relief since you were laid off?

142 A. No.

Q. Did you ever go back to ask for your job after you were laid off?

A. No; I didn't.

Q. Why didn't you?

A. They had a notice on the clock; I was to wait for the notice.

Q. What did it say?

A. That this factory was shut down the 21st until we got a notice.

Q. Did you attend the M.E.S.A. meeting after that?

A. Yes.

Q. Did you picket after that?

A. Yes, sir.

Mr. Lodish: That is all.

Trial Examiner Danaceau: I just want to ask you this question. What were your average earnings before you were laid off, weekly earnings?

The Witness: Twenty-five dollars.

*Testimony of Edward Stack***CROSS EXAMINATION**

Q. (By Mr. Stanley). What was your position, Mr. Stack?

A. In the machine shop.

Q. Clerk?

A. With the machine shop.

Trial Examiner Danaceau: Will you speak up louder, please?

Q. (By Mr. Stanley). How long have you been working in the machine shop?

A. About eleven years.

Q. You have been a regular machinist there?

A. Yes, sir.

Q. You worked under Carbeck?

A. Yes, sir.

Q. How long did you work under Carbeck?

A. Ever since he took the job.

Q. How long ago is that?

A. I am not sure how long it is.

Trial Examiner Danaceau: About how many years, proximately?

The Witness: Three years.

Q. A matter of four or five years?

A. I don't think he was there four or five years.

Q. Was it three years?

A. About two or three years.

Q. Now, in 1934, there was a contract made with the I.E.S.A.; do you know about that?

A. Yes.

Q. And then there was a strike in May of this year?

A. Yes.

Q. You were out on strike and that was on a demand for higher wages?

A. Yes.

Q. And you attended the meeting before you went back to work the first time?

A. Yes, sir.

Q. And you were told that the Federal Conciliator and the company and the M.E.S.A. had gotten together?

A. Yes, sir.

Q. And agreed upon what increase in wages; what was the agreement in wages?

A. Ten percent. I don't know what it was.

Q. What?

A. Ten percent I think.

Testimony of Edward Stack

Trial Examiner Danaceau: He said, "Ten percent I think."

Q. (By Mr. Stanley). You don't mean that; do you?

A. (No answer).

Q. That is your understandnig, that it was a ten percent increase that was settled, you mean it, when you went back?

Trial Examiner Danaceau: Pardon me. Speak up. If you nod your head, he can't hear you.

Q. (By Mr. Stanley). Your understanding was that the settlement was on a ten percent increase?

A. That is my understanding.

Q. How much were you getting per hour?

A. Sixty-two and a half cents.

Q. You understand, that was before the increase?

145

A. No; I was only getting fifty.

Q. How?

A. I was only getting fifty.

Q. Fifty cents?

A. Yes.

Q. And you got an increase of twelve and a half cents?

A. Ten

Q. How?

A. Ten.

Q. Ten cents?

Trial Examiner Danaceau: Was it more than one increase?

Q. (By Mr. Stanley). I think you are confused. Let me straighten it out. Before the strike, there was a voluntary increase before the strike; wasn't there?

A. Yes; not before the strike.

Q. There wasn't?

A. No.

Q. You went from fifty cents to sixty?

A. Sixty cents.

Q. Sixty cents after the strike?

A. Yes.

Q. That would be a twenty percent increase. Are you sure that was right?

A. We got another cent or a cent and a quarter after that.

Q. Well, the payroll will show that. Are you
146 very clear in your mind of what you were getting before and what you got afterwards, Mr. Stack; are you clear about it?

Testimony of Edward Stack

A. Why, at first getting fifty cents an hour and then come up to sixty.

Q. When did you get fifty, up to what time?

A. Before the strike.

Q. Up to the time of the strike this last spring?

A. Yes.

Q. And then you got sixty?

A. Then I got sixty.

Q. When you got the second—

A. Yes.

Q. And then after that did you get some more?

A. Yes; then we got some more.

Q. What were you getting before you quit?

A. Sixty-two and a half.

Q. Sixty-two and a half. That is your understanding. Well, we will let it go at that. Now, what was there that you understood about these men that the company wanted to discharge?

A. I didn't hear nothing about it.

Q. You didn't hear anything about that?

A. No.

Q. Now, when you got out, a matter of a couple of weeks, they had a meeting—well, first before you went out, did you attend the meeting the morning of the strike?

A. I don't think we had one the morning before the strike.

Trial Examiner Danaceau: Which one do you have reference to?

Mr. Stanley: I am talking about the first one, on the 21st.

Q. Did you attend a meeting on that morning?

A. I don't think we had one that morning.

Q. You don't. You went at noon; didn't you?

A. Yes.

Q. How did you happen to go out?

A. I think we had it the night before.

Q. It was the night before, and it reported to you what? Who addressed the meeting?

A. Why, all of us.

Q. How?

A. All of us.

Q. Attended the meeting, you mean, but who talked; Mr. Potter? Mr. Potter, did he tell you what the demand was?

A. Yes.

Q. What was the demand?

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

3

8

9

9



20

Testimony of Edward Stack

- A. The last one, you mean?
- Q. No; just before the first strike.
- A. Well, that is when we wanted that raise.
- Q. You wanted how much?
- A. I don't know how you figure. I got ten
- 148 cents more an hour; that is all.
- Q. Ten cents more an hour; that is what you thought; for everybody in the shop?
- A. No; I think it was for everybody.
- Q. You do?
- A. Yes.
- Q. And then you wanted—that would be a twenty percent increase; wouldn't it?
- A. Yes.
- Q. Well, all right. And was there any talk about any other demands?
- A. No.
- Q. All right. Mr. Potter reported to you what, that you couldn't have it, the company wouldn't give it?
- A. Yes.
- Q. Did he say how much the company would give?
- A. The last time?
- Q. Before the first strike?
- A. Yes.
- Q. How much did he say the company would give?
- A. I don't know how they figured it, but it come to ten cents an hour.
- Q. Who reported that the company would not give it to you? Didn't he?
- A. Not the first strike.
- 149 Q. I am talking about the first strike.
- A. We got it the first strike.
- Q. Now, wait a minute.
- Trial Examiner Danaceau: I think the witness is confused on the various strikes.
- Mr. Stanley: I think so too.
- Q. (By Mr. Stanley). We are talking about the night of the first strike this year.
- Mr. Witt: That would be May 20th.
- Q. (By Mr. Stanley). That is May 20th you had a meeting?
- A. Yes.
- Q. At that time you say you were demanding an increase of ten cents an hour, and Mr. Potter talked to the meeting?
- A. Yes.

Testimony of Edward Stack

Q. He must have told you that the company would not give it; isn't that right?

Mr. Lodish: I object to that, Mr. Examiner, "what he must have told you."

Q. (By Mr. Stanley). After all, they went out on strike?

Trial Examiner Danaceau: I think that, considering the backwardness of the witness, he may lead him.

Mr. Lodish: Withdraw the objection.

Q. (By Mr. Stanley). What did Potter tell you; the company would give it or they refused it?

A. No; he didn't say they would refuse it.
150 They would give it.

Q. That you would get it?

A. Yes.

Q. Then what did you strike for?

Trial Examiner Danaceau: Why did you go out on strike the first time?

The Witness: Well, I think for more wages and better conditions.

Q. (By Mr. Stanley). I know, but you made certain demands; made a demand for ten cents an hour. Nobody it trying to confuse you here. I want to get out what is in your mind. Why did you go out on strike? Did Potter say that the company would not give you the ten cents or they would?

A. I think he said they wouldn't give it to us.

Q. They wouldn't give it to you. Did he tell you how much they would give?

A. No.

Q. How?

A. No; he didn't say any more.

Q. He didn't say any more, and then you voted?

A. Yes.

Q. To go out on strike?

A. Yes.

Q. Now, you went out on strike when, the next morning?

A. The next noon, at noon.

151 Q. You were out for a good long while, a couple of weeks?

A. Yes.

Q. Then you came back to work?

A. Yes.

Q. How did you come back?

A. When it was settled.

Q. Who told you to come back?

Testimony of Edward Stack

- A. The committee.
- Q. The committee told you to come back?
- A. Yes.
- Q. Did they tell you how it was settled?
- A. I don't know how it was settled; they said to go back to work the next morning.
- Q. You don't know how it was settled?
- A. No.
- Q. Did they say anything about the men that the company wanted to be discharged?
- A. No.
- Q. You didn't hear anything about that? Is that right?
- A. Yes.
- Q. You heard that you were to go back at different wages?
- A. Yes.
- Q. You came back to work Monday morning?
- A. Yes, sir.
- Q. You went out again?
- 152 A. We were pulled out. I don't know.
- Q. Who pulled you out?
- A. Potter.
- Q. You don't know what you went out for?
- A. No. I come to work the next morning and we was out on the street. That is all I know.
- Q. You don't know anything about the reason that you were pulled out?
- A. Not at the time I came to work.
- Q. When did you find out?
- A. After I was there a while.
- Q. What did they tell you?
- A. Said we shouldn't go to work.
- Q. Well, what was the reason you shouldn't go to work?
- A. I think they wanted more money.
- Q. You think they wanted more money?
- A. Yes.
- Q. How much more money?
- A. I don't know. A cent and a quarter; I don't know what it is.
- Q. Are you very clear in your mind on any of these things about why you were striking?
- A. Why, sure.
- Q. Well, then, you were striking the second time for a cent and a quarter an hour more?
- A. I think it was.

Testimony of Edward Stack

153 Q. You think it was. You aren't sure about that?

A. (No answer).

Q. Nothing about any men that the company wanted to discharge?

A. No; I don't know anything about that.

Q. You worked in the machine shop for how many—well, let us finish this up. You went along for several days and came back; how was it settled then?

A. I didn't come back.

Q. That is the second strike?

A. The second strike?

Q. Yes, the second strike?

A. After I seen the police there, I didn't come down at all the second time.

Q. What?

Trial Examiner Danaceau: He said after he saw the police there he didn't come down the second time.

Q. (By Mr. Stanley). Well, that is the third strike?

A. That is the second one.

Q. You missed one?

A. That is the second strike.

Q. The first strike you had a couple of weeks and then you came back?

Mr. Witt: Two days.

154 Q. (By Mr. Stanley). Two days, and then there was another strike?

A. Yes.

Q. And then you were out for a week or ten days or more; weren't you?

A. Yes.

Q. And then you came back?

A. Yes.

Q. And how did you understand that had been settled when you came back that next time?

A. What do you mean? When I came back after the second strike?

Q. Yes. That would be in June, not this last one.

Trial Examiner Danaceau: The one in June.

A. Or you mean the one when we were laid off?

Q. No; I mean the second strike?

A. The second strike. I told you I didn't know nothing about it until I come to work in the morning.

Q. That was when Potter pulled you out?

A. Yes.

Q. But when you came back from that in a couple

Testimony of Edward Stack

of more weeks, how had they been settled? Who told you to come back?

A. I come down to work in the morning; that is all.

Trial Examiner Danaceau: Did you ever come back to work after you were pulled out, as you say, by Mr. Potter?

The Witness: To work?

155 Trial Examiner Danaceau: Yes.

The Witness: No.

Q. (By Mr. Stanley). You mean you didn't work this last—

Trial Examiner Danaceau: July or August?

Mr. Witt: That is not correct as shown by this table.

Trial Examiner Danaceau: When was the last time you worked?

The Witness: The last time I worked was the 21st of August.

Mr. Witt: If we might offer this, this witness thinks the happening of June and August as one time.

Mr. Stanley: We will get it straightened out.

Q. (By Mr. Stanley). You voted the first strike?

A. Yes.

Q. And then the committee told you to come back?

A. Yes.

Q. And then you worked a couple of days?

A. Yes.

Q. And then Mr. Potter pulled the second strike?

A. Yes.

Q. Then you are out a week or two more?

A. Yes.

Q. And then you came back?

A. Came back to work?

Q. Yes; about the middle of June?

156 A. Yes.

Q. How was that settled in the middle of June?

A. The committee came back.

Q. How was it settled?

A. The committee settled it.

Q. You don't know how it was settled?

A. No.

Q. That is fair enough. The committee told you to come back to work that time?

A. Who?

Q. The committee told you to come back to work?

A. Yes.

Trial Examiner Danaceau: How old are you?

The Witness: Fifty-three.

*Testimony of William Brandt***RE-DIRECT EXAMINATION**

Q. (By Mr. Lodish). Just one question please. When you say you were pulled out, you mean somebody grabbed hold of you?

A. No, no.

Q. What do you mean?

A. They said that we were pulled out; that's all.

Q. Somebody told you?

Trial Examiner Danaceau: That is a common expression.

Mr. Stanley: He didn't mean it physically.

Trial Examiner Danaceau: Any further questioning of this witness?

Mr. Stanley: That's all.

157 Trial Examiner Danaceau: If that is all, we will adjourn until tomorrow morning at ten o'clock.

(Thereupon, at 4:30 o'clock p. m. adjournment was taken until 10:00 o'clock a. m., the following day.)

TUESDAY, NOVEMBER 26, 1935

(The hearing was resumed at 10:00 o'clock a. m. pursuant to adjournment.)

Trial Examiner Danaceau: Let us proceed now.

Mr. Stanley: I have a question to ask of the witness who was on the stand yesterday.

Mr. Witt: Brandt?

Mr. Stanley: Yes.

WILLIAM BRANDT,

recalled as a witness by the National Labor Relations Board, further testified as follows:

CROSS EXAMINATION

Q. (By Mr. Stanley). You say that five years ago you worked in the machine shop; was that some special work?

A. Why no; it was sample work.

Q. Sample work?

A. Yes.

Q. Well, how long was that?

A. Well, worked on that off and on.

Testimony of William Brandt

Q. Well, altogether how long was it?

A. Well, several days.

158 Q. Not to exceed a week altogether?

A. No.

Q. What other things? You mentioned some man that you discharged; what was his name?

A. Mason, as I recall. I didn't discharge him. I recommended him to Mr. Herbie Sands that his work was not satisfactory.

Q. Did he belong to the M.E.S.A.?

A. I don't know.

Q. As a matter of fact, he belonged to the A. F. of L.?

A. I don't know. He was a new man.

Q. A new man?

Trial Examiner Danaceau: How long ago was this?

The Witness: This was after we came back.

Trial Examiner Danaceau: After you came back in June?

The Witness: Probably sometime between July and August; I couldn't say exactly.

Q. (By Mr. Stanley). Had he been working in the spring?

A. I don't believe so. I believe he was a new man.

Q. A new man taken on after the return to work in June this year?

A. Yes, some time in between.

Q. And after that how long did he stay in the shop?

A. I don't know. When I recommended him, I told Herbie Sands that he was not satisfactory down there and Herbie told me to send him up to him and I didn't know whether he discharged him immediately

159 or not, but about two or three days later I saw him in the shop; that is all I know.

Mr. Witt: The production payroll will show—

Mr. Stanley: I am just looking.

Mr. Witt: That Mason was hired on June 29th, 1935. He is way down in the middle of the list. That is J. Mason.

Mr. Stanley: I think that is all.

Mr. Witt: Just one question.

DIRECT EXAMINATION

Q. (By Mr. Witt). How long did this man Mason work under you?

A. I couldn't tell you; probably two days.

Testimony of John O. Sweitzer

Q. Probably two days. What did you tell Herbert Sands when you spoke to him about Mason?

A. I told him I didn't think he was qualified for the job; he lagged in his work.

Q. Did you recommend about his being discharged or did you complain?

A. I complained to him.

Q. Did you recommend him to be discharged to him?

A. No; to Herbert Sands.

RE-CROSS EXAMINATION

Q. (By Mr. Stanley). As a matter of fact, the payroll shows he was not discharged?

A. I don't know about that.

Q. What kind of work was he doing in your 160 department?

A. Assembling.

Q. That is assembling different parts; not assembling a whole heater?

A. No.

Q. He wasn't competent for assembling even parts?

A. Well, he was slow.

Q. I see, and you discovered that after two days work?

A. I noticed the first day he was lagging, but I left it go. I thought I would give him a break and see how he could turn out. I don't expect the man to do the work in a few hours or a day; have to give him a little time.

JOHN O. SWEITZER,

called as a witness by the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Lodish). Will you state your name and address please?

A. John O. Sweitzer, 905 East 55th.

Q. Were you an employee of The Sands Manufacturing Company?

A. Yes, sir.

Q. When were you taken on there? When were you hired?

Testimony of John O. Sweitzer

A. During the Government order of 1934, around October or November. I couldn't say exactly.

Q. Would you say October 24th, 1934 is about right?

A. Around that time.

Q. When were you laid off?

161 A. I worked about three and a half weeks in November it was, about, around Thanksgiving it was.

Q. Worked until about Thanksgiving you say?

A. Started before Thanksgiving?

Q. And then you were laid off?

A. Laid off again.

Q. Did you ever go back to work there?

A. I did.

Q. What was the occasion for that; how did that arise?

A. Herbie Sands sent a fellow over for me on Washington's Birthday, 1935.

Q. February 22nd?

A. February 22nd, Monday at noon.

Q. Did you go to work then?

A. Went to work at noon.

Q. How long did you work again?

A. Until the 3rd of May.

Q. What happened then?

A. Laid off again.

Q. Did you go back after that?

A. May 13th.

Q. Of May?

A. May 13th.

Q. How long did you work then?

A. Until the 30th of July.

Q. Were you laid off then?

162 A. I was laid off the 30th of July.

Q. To refresh your recollection, is your memory that you were laid off July 30th or might it have been July 27th; which is correct?

A. It is July 30th.

Q. You are sure of that?

A. Positive of that.

Q. Is that the last time you were laid off?

A. Last time.

Q. You never worked there since?

A. Never.

Q. Did you ever go back and ask for your job?

A. I have been in the shop; didn't ask for a job.

Q. Why?

Testimony of John O. Sweitzer

A. Before, when I was laid off, they either sent me a card or called me back to work.

Q. Did you attend an M.E.S.A. meeting on September 5th?

A. Yes.

Q. Did you picket afterwards?

A. Yes.

Q. Are you a member of the M.E.S.A.?

A. Yes, sir.

Q. Were you a member when you were working?

A. Yes, sir.

Q. What sort of work were you doing?

163 A. Valve testing in the machine shop; ordinary testing and assembling valves in the machine shop.

Q. Have you earned any money since last layoff?

A. Not any cash, no.

Q. What do you mean not any cash?

A. Worked for room and board.

Q. Haven't got any cash at any time?

A. No.

Q. Getting your board since you were laid off?

A. Since the 9th of September.

Q. Since the 9th of September. Are you prepared to estimate how much that is worth a week, your room and board?

A. I would say seven dollars a week, eight dollars.

Q. Have you received any relief?

A. No, sir.

Q. How much?

A. I didn't.

Q. Oh, you didn't?

Trial Examiner Danaceau: What do you do?

The Witness: Work in the garage with the fellow I stay with.

Trial Examiner Danaceau: How much time do you put in every day?

The Witness: It all depends on the work. One day it gets busy and I help out.

164 Q. (By Mr. Lodish). When you were first hired, he said there was a Government order?

A. A Government order.

Q. How did you know it was a Government order; what was said to you?

A. As far as I know, the Government order—Herbie was the man who hired me.

Q. Herbie Sands hired you?

Testimony of John O. Sweitzer

A. Yes.

Q. What did he tell you?

A. "I don't know how long it will last. Give you a job; I don't know how long it will last."

Q. The first time you were laid off was when?

A. Laid off in November; laid off a week in May.

Q. Finally when, in July?

A. The final one in July.

Q. This last layoff in July, how did that occur? How were you laid off?

A. A sign on the clock.

Q. What did the sign say?

A. I couldn't say exactly what it said; something about being laid off until notified. The exact wording, I don't know.

CROSS EXAMINATION

Q. (By Mr. Stanley). Just a minute. Our records show that your last payday was in July?

165 A. I was laid off in July the last time.

Q. Your last pay day was in July?

A. Well, I got my last pay when I was laid off; I got laid off on payday.

Q. Well, as a matter of fact, this notice on the clock was a month after that, the latter part of August?

A. There was a notice when I got laid off in July, too.

Q. Still another notice laying everybody off?

A. No, not everybody; just the new men. I was supposedly a new man.

Q. What did it say?

A. I didn't hear you.

Q. What did it say?

A. I don't know exactly. I can't state the exact words. Layoff until further notice. I didn't pay attention.

Q. To whom?

A. To these new men, numbers 29 and up, all new men; that is all I know.

Q. Well, let us go back to the start. How old are you?

A. How old? Twenty-seven years old.

Q. Where did you work before you came to Sands?

A. I worked a number of places before I went to Sands.

Testimony of John O. Sweitzer

Q. Where?

A. I worked at Bourne-Fuller Company; went to Pennsylvania.

166 Q. Where?

A. Bourne-Fuller.

Q. And then went to Pennsylvania?

A. Went to Pennsylvania.

Q. What kind of a shop?

A. Not a shop; coal mine.

Q. In the coal mine as a miner?

A. I didn't work in the mines; outside gang. I was a snapper on the dinky; worked in the coal yard a while.

Q. As a common laborer?

A. As a common laborer, yes.

Q. After you got through the mining work, where did you go?

A. I came to Cleveland; got hurt in the mines; came back to this fellow I am working for now.

Q. He run a public garage?

Mr. Witt: We object to that.

Trial Examiner Danaceau: Well, just a small amount of that. I don't want to burden the record.

Mr. Stanley: I don't either.

Q. (By Mr. Stanley). And you worked for your board and room when you came back?

A. Yes.

Q. And continued that for how long?

A. Off and on for a couple of years I would say.

Q. Then where did you get a job?

A. The Sands Manufacturing Company.

167 Q. So you were out of work two years before you got this work on the Government work at Sands?

A. I would say about two years.

Q. And were you sent for at that time?

A. No. I got that job with the Government—I went over after it.

Q. You applied for it.

A. I applied for it.

Q. You went over and applied for it?

A. I heard they had a Government order and I went over and asked for it.

Q. You never worked in the machine shop?

A. I worked on the drill press but not on the Government.

Testimony of John O. Sweitzer

Q. You had no experience?

A. No.

Q. As a machinist?

A. No.

Q. What union did you belong to before you went to Sands?

A. I didn't belong to any union.

Q. And you joined how soon after you came to Sands?

A. I think it was the 31st of October, 1934.

Q. You started to work when?

A. Well, the latter part.

Q. About a week before that?

A. About a week before that I would say.

168 Q. And you were told that this was a short job?

A. No; I wasn't. I was told he didn't know how long it would last.

Q. You were hired just for the time of the Government work; that is what I am getting at; is that right?

A. Well, I couldn't say that in the first place. I didn't know how long the Government work would last. He told me he didn't know how long the work would last.

Q. You were hired for this Government work and you didn't know how long the Government work would last?

A. Yes.

Q. You did work on that Government work for a time in the fall?

A. Yes.

Q. And who told you you were to quit?

A. I didn't quit; I was laid off.

Q. At any rate, what was said to you when you left?

A. Nothing said. The man came in and handed me my pay envelope. "You are through for the time being."

Q. And you didn't come in after that?

A. I didn't come in the shop after that.

Q. And then you went and worked for your room and board for this garage man; that is correct?

A. Yes.

169 Q. Then you came back on the 22nd of February?

A. The 22nd of February.

Q. And then you went home?

Testimony of John O. Sweitzer

A. He sent a boy after me, Herbie Sands did, to see me.

Q. Then you came over and went to work on what sort of work?

A. Machine shop.

Q. Doing what sort of work?

A. Testing valves.

Q. That is work you had done before?

A. No. Well, I had tested some valves before that.

Q. And you worked at that for a matter of a month?

A. From February I stayed in the machine shop on that job, from the 22nd of February until the final layoff, 30th of July.

Q. And I thought there was a period in there when you weren't working?

A. One week I got laid off in May for one week; that is all.

Q. Who told you then to quit work?

A. I was laid off at that time until further notice.

Q. Who told you?

A. There was a sign on the clock then.

Q. How did you come back to work?

A. The card sent to me to come to work.

Q. And you came back?

A. Came back on Monday.

Q. You worked until July?

A. Up until the strike and then went back
170 after the strike and went out on strike.

Q. That was approximately a month in that period; a little less than a month about May or the latter part of May, the 21st?

Mr. Witt: May 21st to June 15th.

Q. (By Mr. Stanley) About June 15th?

Mr. Witt: 17th.

Q. (By Mr. Stanley). The 17th, you were out of work then?

A. On a strike.

Trial Examiner Danaceau: With the exception of about two or three days they went back?

Q. (By Mr. Stanley). That is right?

A. I was only out one day then.

Q. You were told at that time—how did you get back to work?

A. After the strike?

Q. Yes.

A. Well, they started to work on Monday after the strike. I went over to see when I was to come

Testimony of John O. Sweitzer

back and they told me to come back Wednesday; worked one day and then we went out between that.

Q. Who told you to come back to work?

A. Herbie told me to come back.

Q. I beg your pardon?

A. Herbie Sands told me to come back on Wednesday.

Q. Herbie Sands told you?

A. Yes, sir.

171 Q. You worked that day and quit again. That was the last time?

A. No; they were all called out the following day.

Q. Who called you up?

A. The union did.

Q. Who gave you the order?

A. Gave orders for what? To get out?

Q. Yes.

A. When I came out on this Wednesday, the men were all out.

Q. That is, you saw the pickets there?

A. I saw the pickets there and stayed out another day.

Q. When it came to June 15th or 17th, who told you to come back to work?

A. I saw Charlie Rudd at that time.

Q. Who?

A. Charlie Rudd.

Q. Who is he?

A. Financial Secretary of the Local I belong to. He said the strike was settled up and to go back to work Monday morning again.

Q. Now, you continued to work then until the last week in July?

A. The 30th of July.

Q. And then you left?

172 A. And I was laid off again.

Q. And went back to this same work for your board again?

A. Yes.

Q. And you haven't been back since?

A. I have been in the shop, but I haven't been working since.

Q. Then you were picketing during that time?

A. I was out there several times, several days; I would say four days altogether.

Q. You said that you came back and that the

Testimony of Henry J. Meyer

—pickets and the men were out and you didn't know why they were out?

A. I didn't say I didn't know why they were out. I said I saw the pickets there.

RE-DIRECT EXAMINATION

Q. (By Mr. Lodish). Mr. Sweitzer, do you have a number? Talking about a time card, do you have a card with a number on it?

A. I did have.

Q. Do you remember your number?

A. The last time, if I am not mistaken, it was thirty-six. I had several numbers in between. The numbers kept changing.

Q. The last time it was thirty-six?

A. I am pretty sure it was thirty-six.

Q. Anything on the clock, the notice to show that you were laid off?

A. Yes; the numbers from 29 up were to be laid off.

Q. The numbers from 29 up were to be laid off?
173 off?

A. Yes.

Q. When I asked you how you knew it was a Government job, you said you had heard the men talk about that?

A. Yes, in the shop.

Q. Who did you say employed you; Herbie Sands?

A. Herbie Sands.

Q. Did he say it was a Government job?

A. He didn't say anything about a Government job.

Q. Did he say it was a Government job you were being hired for?

A. He didn't say it was a Government job. I asked him for a job and he said, "I will give you a job, but I don't know how long it will last." Those are the words he said.

HENRY J. MEYER,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Lodish). Will you state your name and address so the reporter can get it?

A. Henry J. Meyer, 3045 West 51st Street.

Testimony of Henry J. Meyer

- Q. Were you an employee of The Sands Company?
A. Yes, sir.
Q. Are you a member of the M.E.S.A.?
A. Yes, sir.
Q. Were you a member when you were working?
A. Yes, sir.
- 174 Q. What type of work did you do in the Sands Company?
A. Assembling valves.
Q. What department are you in?
A. The machine shop.
Q. Machine shop; classified in the machine shop?
A. Yes.
Q. Do you remember when you were hired there the first time when you were first hired?
A. On August 5th, 1923.
Q. If I should say to you that the records show that you were hired in April, 1923, would that refresh your recollection? Would you think that was right?
A. Well, it was either April or May.
Q. You think that is about right?
A. Yes, sir.
Q. When were you laid off the last time?
A. The last time?
Q. Yes.
A. August 21st, 1935.
Q. August 21st, 1935. Is there another Meyers working at the plant?
A. There is a Louis Meyers.
Q. Your name is?
A. Henry J.
- Q. Had you ever been laid off before August 21st?
175 A. Well, for two days.
Q. When was that about?
A. Around six years ago.
Q. Other than that you have worked steadily from the time you were employed until the time you were laid off on August 21st?
A. Yes.
Q. Always full weeks?
A. Well, during the slow periods it was three days a week.
Q. Did you ever go back and ask for your job after August 21st?
A. No, sir.

Testimony of Henry J. Meyer

Q. Why didn't you?

A. Well, according to the notice on the time card, the factory will close until further notice and I am still waiting for the notice.

Q. Did you attend a meeting of the M.E.S.A on September 5th?

A. Yes, sir.

Q. Did you picket later?

A. Yes, sir.

Mr. Lodish: That is all.

Q. (By Mr. Lodish). Just a moment. Have you earned any money since you were laid off?

A. No; I have not.

Q. Have you gotten any relief since you were laid off?

176 A. No, sir.

Trial Examiner Danaceau: What were you earning at the time you were laid off?

The Witness: Sixty-eight cents an hour.

Trial Examiner Danaceau: How much would that average a week?

The Witness: About twenty-seven dollars a week.

Mr. Witt: Forty hours a week, Mr. Examiner.

The Witness: That is a full week.

CROSS EXAMINATION

Q. (By Mr. Stanley). You were working only part time?

A. When was that?

Q. How?

Trial Examiner Danaceau: "When was that," he said.

Q. (By Mr. Stanley). How many hours did you say you were working just before the layoff?

A. Well, the last time, the last week of the layoff it was three days; previous to that it was five days, forty hours.

Q. I see. That is why I asked that. Now, you had short weeks in the preceding year; too; hadn't you?

A. Yes.

Q. Had three-day weeks?

A. Yes.

Q. In August of 1934?

A. I believe we had, yes, sir.

Trial Examiner Danaceau: Speak up louder so

Testimony of Henry J. Meyer

177 everybody can hear you.

Q. (By Mr. Stanley). And you had in other years short weeks?

A. Yes, sir.

Q. And they come along in July and August, some of them, and some of them in the middle of the winter; isn't that right?

A. Yes, sir.

Q. You hadn't belonged to any union at all, had you, until the M.E.S.A. was started?

A. No, sir.

Q. And after the M.E.S.A. was organized, you continued to have just as much work as before. I am talking about you, personally?

A. Yes, sir.

Q. Now, you knew the committeemen?

A. I did.

Q. And starting in July you had—did you know that there were any meetings between the committeemen and the management?

A. Yes.

Q. In July of this year, now this is after the strike?

A. Yes.

Q. You knew about that?

A. Yes.

Q. How frequently did you have meetings, I mean of all the men; I am not talking about the committeemen. You weren't a committeeman, of course?

A. No; I was not.

178 Q. I mean of the men?

A. Well, we had a few meetings.

Q. I am talking about July now?

A. I don't remember.

Q. Did you attend any meetings in July?

A. I attended a meeting.

Q. Let us see if we can make it a little easier for you. You came back to work on June 17th after the second strike?

A. June 17th?

Q. Yes. Now, let us take that period commencing there, what was the first meeting of the M.E.S.A.?

A. September 5th.

Q. No meetings from June 17th until September 5th? I am not trying to contradict you; I am trying to get the facts.

Trial Examiner Danaceau: Do you know whether

Testimony of Henry J. Meyer

there was any meeting between June 17th and September 5th?

The Witness: Yes; we had a meeting.

Q. When was that?

A. Right after the strike.

Q. How soon after the strike?

A. Well, I should say about a week.

Q. All right now. Was that the only meeting from the time the strike was over until September 5th?

A. Well, September 5th--inclusive?

Q. I mean that meeting a week after June 17th, which would make it somewhere around the 25th of June. Was there any other meeting that you remember from that time on until September 5th?

A. I don't remember.

Q. You don't remember any meetings then?

Mr. Witt: Mr. Stanley, if we may interrupt, we are not sure whether the witness is getting your questions. You mean the—

Mr. Stanley: Well, let me see.

Mr. Witt: We are wasting time.

Mr. Stanley: I think he must have.

Trial Examiner Danaceau: Let us proceed.

Mr. Stanley: Let us find out what kind of a meeting he is thinking about.

Q. (By Mr. Stanley). As I understand it, there is a Local of the M.E.S.A. which contains members of the employees of the Sands Manufacturing Company and of one or two other companies; that is right?

A. Yes, sir.

Q. Where do they hold their meetings?

A. At the Bohemian National Hall.

Q. The Bohemian National Hall; where is that?

A. 49th and Broadway.

Q. Who presides at the meetings?

A. Well—

Q. Mr. Potter?

180 A. Until he became State Chairman, he presided.

Q. Then who presided?

A. I think it was Johnny Janidlo.

Q. Now, that is the meetings that you referred to; those meetings held down there?

A. Well, are you referring to the meetings of the M.E.S.A. or the Sands Manufacturing Company?

Testimony of Henry J. Meyer

Trial Examiner Danaceau: The witness is asking which meetings you are referring to.

Q. (By Mr. Stanley). Then I will come to the other. Were there any other meetings of just employees of the Sands Manufacturing Company?

A. Yes, there were.

Q. You were referring to the meetings of just of the Sands Manufacturing Company, were you?

A. No. I was referring to the meetings. I was referring to the meetings of the M.E.S.A at the Bohemian National Hall.

Q. There was one meeting on June 25th at the National Hall up until September 5th? That is what you meant?

A. Will you repeat that?

(Last question read by the Reporter.)

A. There was a meeting twice a month at Bohemian National Hall.

Q. Did you attend?

A. I was not a regular attendant. I attended
181 two or three meetings.

Q. Did you attend a meeting in between that period of June 25th and September 5th?

A. Yes, sir.

Q. How many meetings did you attend?

A. I would say approximately five to six meetings.

Q. Those meetings had to do with the general welfare of the Local, in a general way and not so much with the Sands employees?

A. Yes, sir.

Q. Now we will come to the meetings of the Sands employees; where were they held?

A. Well—

Trial Examiner Danaceau: Where were they held?

The Witness: Two meetings were held at the M.E. S.A. hall on Euclid Avenue.

Q. (By Mr. Stanley). All right now. Let us start at the time of the strike, when the strike was over, rather. How soon after the strike was over did that kind of a meeting occur?

A. That occurred after the factory was closed down.

Q. That is after September 5th?

A. Yes, sir.

Q. And before that what was the last meeting?

Trial Examiner Danaceau: What group do you have reference to?

Q. (By Mr. Stanley). Of the group of just the

Testimony of Henry J. Meyer

182 the Sands Company employees?

A. Well, we had a meeting down on the corner that was not at the hall, see.

Q. When was that?

A. That was previous to—just after the strike, about a week.

Q. Yes. That was the meeting, that was the one that you referred to about a week after that?

A. Yes.

Q. Where was that?

A. The corner of 55th and Francis, the corner of 55th and Sweeney.

Q. That was the meeting near the shop?

A. Yes.

Q. Did you have any meetings after September 5th?

A. I don't remember.

Q. You don't recall any; is that it?

A. Yes.

Q. Had none in the shop?

A. No, sir.

Q. The committeemen called you together in the shop during that period?

A. No.

Q. Well, if they didn't, all right. I am not referring to any particular thing. I am just asking you for your recollection?

183

A. Well, I can't state definitely they did.

Q. You don't recall any?

A. No.

Q. That's right. Now, when you came back to work after the first strike, you came back and worked two or three days. I presume you remember that occasion?

A. Yes, sir.

Q. Then you went out again?

A. Yes, sir.

Q. Now after you came back to work the first time, was there any talk about certain employees that the Sands Manufacturing Company did not want to take back?

A. Yes, sir.

Q. There was?

A. Yes, sir.

Q. And you knew who they were?

A. I knew.

Q. There was five—

A. Five or six.

Testimony of Henry J. Meyer

Q. Those men were taken back to work finally?

A. They were later on, yes, sir.

Q. That is after the second strike we will call it.

A. Well, it was the purpose of the strike to take them seven men back.

184 Q. To require those men to come back?

A. To reinstate—to reinstate, yes, sir.

Q. And they were taken back?

A. Yes, sir.

Q. Was there any hearing about it between the company and the committee, the shop committee, as to trying out the question as to whether they were efficient?

A. Yes, sir.

Q. Or not?

A. Yes, sir.

Q. Were you there?

A. I recollect when the committee went in.

Q. That is when they went in to demand that they be taken back but was there any hearing after you came back to work on June 15th?

Trial Examiner Danaceau: Do you know of any hearing?

Q. (By Mr. Stanley). Do you know that there was?

A. I don't remember.

Trial Examiner Danaceau: You mean you don't know at this time?

The Witness: At this time, yes, sir.

Mr. Stanley: That is all.

Trial Examiner Danaceau: That is all.

Mr. Witt: Just a minute.

RE-DIRECT EXAMINATION

185 Q. (By Mr. Lodish). Mr. Meyer, during these periods discussed, did you see the committeemen from time to time or any one of them?

A. Yes, sir.

Mr. Stanley: Which period?

Q. (By Mr. Lodish). From June 17th to August 21st?

A. Yes, sir.

Q. And did you see them all or sometimes one or sometimes two; how would that work?

A. Well, sometimes I saw two, three, one.

Q. Without going into detail too much, did they tell you what was going on? Is that the point of these meetings?

Testimony of Henry J. Meyer

Mr. Stanley: Well, I certainly object to that.

Mr. Lodish: Well, it is just to clarify the issue of the meetings; how these committeemen—

Trial Examiner Danaceau: I think you have gone in to that fact more than once. It has been answered anyhow.

Mr. Lodish: All right.

Trial Examiner Danaceau: Anything further?

Mr. Stanley: That is all.

Mr. Lodish: That is all. You said you would like to hear one more witness.

Trial Examiner Danaceau: I think we have had five of these witnesses and for the time being I don't think we should call any more along the same line, 186 and I again urge that you make a list of all the former employees, giving their names and addresses and the time that they stopped working and what they have been doing since and what they received since, and that that list be submitted to be checked by counsel on both sides, and then if there is any question arising as to those former employees, the men that were formerly employed there, we can then call them.

(Conversation had off the record.)

Trial Examiner Danaceau: Now, gentlemen, the sole purpose of making the summary is to avoid the large number of witnesses that we would otherwise have to call. Now if among these witnesses there are men that you wish to have testify on matters of controversy, they will be treated as ordinary witnesses out of that group. That applies to both sides, and now let us proceed. Now, by the way, the witnesses who will not testify or be called may stay in here or stand out there if you expect to call them.

Mr. Witt: No; we don't expect to call them. That is, we don't expect to call any of the other mass witnesses.

Mr. Stanley: The last thing I want to do is to mislead counsel on the other side. I want to be perfectly fair on this. If there are any of these witnesses to be called on any issue in this case, we certainly do not want them in this room. Up until this time we have not stipulated anything as to any witness whatsoever as to what we might want to cross examine them on, and I don't want to get into a position of having you believe that we have so stipulated. 187

Testimony of Charles E. Rudd

Mr. Witt: Well, we will take your ruling on that, Mr. Examiner.

Trial Examiner Danaceau: My ruling is that we have had ample testimony from the rank and file of the employees as to the matters in controversy relating to the mere rank and file employees.

Mr. Stanley: That is as to the damage fee.

Trial Examiner Danaceau: Yes, as to the damage fee, as to what they have been doing since they have been out of employment. Let us see, when was that, August—

Mr. Witt: August 21st.

Trial Examiner Danaceau: In other words, that group testimony; we have had ample of that sort of testimony. Now, if among these witnesses there are any that you expect to call, keep them out of this room during the hearing until they are called. The others may stay in.

Mr. Stanley: We are coming to the point where we have an issue regarding many of them. The Examiner has read our answer?

Trial Examiner Danaceau: Yes.

Mr. Stanley: There are issues involving many of these witnesses.

Trial Examiner Danaceau: Well, I take it the
188 Government knows which witnesses will be called to uphold their contention in this matter of a controversy, and I have stated that to you.

Mr. Stanley: So if you bring them in, you will take it under your risk; I say that in courtesy to you. We don't expect to have them go on in rebuttal.

Mr. Witt: You have wasted enough time. We will keep the people that we named yesterday morning, the officers of the M.E.S.A. and the committeemen.

Trial Examiner Danaceau: In other words, everybody will stay out.

(Separation of witnesses had.)

Mr. Witt: We will call Mr. Rudd.

CHARLES E. RUDD,

called as a witness by the National Labor Relations Board, being first duly sworn testified as follows:

*Testimony of Charles E. Rudd***DIRECT EXAMINATION**

Q. (By Mr. Witt). Give the reporter your name and address, please?

A. Charles E. Rudd, 10013 Harvard Avenue.

Q. Mr. Rudd, were you an employee of the Sands Manufacturing Company?

A. Yes.

Q. When did you first begin to work for the Sands Manufacturing Company, do you recall?

A. About seven years ago.

189 Q. About seven years ago. If I told you that the date would be September 26th, 1928, would you say that was about correct?

A. Yes, sir.

Q. When were you laid off this last time?

A. September 4th.

Q. September 4th, 1935?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. What work were you doing when you were working for the company?

A. I started in the shipping room and was transferred in charge of the tank department.

Q. How long were you in charge of the tank department?

A. I think six years last May.

Q. Six years last May. During the course of your employment with the company, did you ever work in the machine shop?

A. Off and on.

Q. Off and on?

A. A few years back, not lately.

Q. When was the last time you worked in the machine shop?

A. About two years ago.

Q. About two years ago. Before that, can you tell us how many times you worked in the machine shop?

A. Just once or twice.

190 Q. Just once or twice. For how long on each occasion?

A. A half a day or a day.

Q. A half a day or a day each time; never more than a day or two?

A. No.

Q. Have you had any work since you were laid off on September 4th?

Testimony of Charles E. Rudd

A. No, sir.

Trial Examiner Danaceau: Speak louder.

The Witness: No, sir.

Q. (By Mr. Witt). You had no work whatsoever?

A. No, sir.

Q. Did you obtain any relief since that time?

A. Yes, sir.

Q. How much relief have you obtained?

A. Fifty-five dollars.

Q. Fifty-five dollars?

A. A ton of coal.

Q. How much is that worth?

A. Five fifteen.

Q. You say the ton of coal is worth five fifteen?

A. Yes, sir.

Q. Did you get a regular allowance from the relief office?

A. No; it varied.

Q. It varies from time to time?

A. Yes.

191 Q. But the total you received you say is approximately—

A. Fifty-five dollars.

Q. Fifty-five dollars. You are still on relief?

A. Yes, sir.

Q. Were you paid on a salary by the company or were you paid at an hourly rate?

A. An hourly rate.

Q. Were you ever paid on a salary basis?

A. No, sir.

Q. You were always paid on an hourly rate?

A. Yes, sir.

Q. When did you join the M.E.S.A.?

A. April, 1934.

Q. Did you get an increase in your rate thereafter?

A. Yes, sir.

Q. Was that under the agreement made between the company and the M.E.S.A.?

A. Yes, sir.

Q. You were on strike during May and June of this year?

A. Yes, sir.

Q. When did you go back?

A. Went back on June 3rd or something like that, I think it was the 5th, and then went back the second time on June 17th.

Q. Did you get an increase in your rates when you went back on June 17th?

Testimony of Charles E. Rudd

192 A. Yes, sir.

Q. Was that under an agreement between the company and the M.E.S.A.?

A. Yes, sir.

Q. What was your title in the tank heater department?

A. As leader.

Q. As leader in that department did you have a right to hire men in that department?

A. No, sir.

Q. Did you have a right to fire men?

A. Since Herbie Sands was there we had to recommend them.

Q. You could recommend to fire men?

A. Yes, sir.

Q. Herbie Sands was superintendent?

A. Yes, sir.

Q. Before that?

A. Before that, I had to fire two men.

Q. You had absolute right to fire?

A. I took them down to the superintendent.

Q. Did you get an O. K. from the superintendent to fire them?

A. No, sir.

Q. Not at that time?

A. I didn't.

Q. Were you ever called a foreman by the management?

193 A. Yes.

Q. You were?

A. Yes.

Q. When was that title changed?

A. When the NRA came in, I understood.

Q. Did any member of the management tell you your title was changed?

A. Yes.

Q. Who was that?

A. Herbie Sands.

Q. What did Herbie Sands tell you about that?

A. He said we would be called leaders.

Q. You were called leaders?

A. Yes.

Q. When is it you said you came back after the second strike this year?

A. June 17th.

Q. June 17th. Did you have any occasion thereafter

Testimony of Charles E. Rudd

to discuss either the M.E.S.A. or the A. F. of L. with any member of the management?

A. Yes, sir.

Q. What member of the management?

A. Herbie Sands.

Q. What was the occasion of that?

Mr. Stanley: Let us have the date first.

Q. (By Mr. Witt). About when was this,
194 Mr. Rudd?

A. Within fifteen days after we went back to work.

Q. That would be—

A. Approximately ten days.

Q. Approximately ten days; that would be late in June this year?

A. Yes.

Q. And this was a conversation you had with Herbie Sands?

A. Yes.

Q. Did he approach you or did you approach him?

A. I approached him.

Q. What was the occasion, Mr. Rudd?

A. Some of my men were claiming intimidation by other men in the shop.

Q. What other men in the shop were intimidating them?

A. The Carbecks.

Q. You say anything to Sands about that?

A. I asked him why they were signing up men in the A. F. of L. when our committee agreed not to talk to these men for fifteen days.

Q. What do you mean by that?

A. A written agreement.

Q. A written agreement had, which included a provision that your committee could not talk to new employees within fifteen days?

A. The agreement says they can fire them.

195 Mr. Stanley: Let us see the provision.

Trial Examiner Danaceau: What is your answer?

Mr. Witt: Let him answer.

Trial Examiner Danaceau: The question was, "What do you mean by that?"

A. The contract says they can fire a man within fifteen days without a hearing before the committee.

Trial Examiner Danaceau: What contract did you have reference to?

Testimony of Charles E. Rudd

The Witness: The final contract.

Q. (By Mr. Witt). Mr. Rudd, I show you Respondent's Exhibit 5, which purports to be a copy made on June 15th between the company and the M.E.S.A. Will you point out what provision you have in mind?

A. Paragraph Twelve.

Q. Paragraph Twelve. Will you repeat what you said to Herbert Sands on this occasion late in June?

A. Yes, sir. I asked him why—

Mr. Stanley: Wait a minute.

Trial Examiner Danaceau: Just a minute.

The Witness: Paragraph Twelve.

Mr. Stanley: If you are referring to the same section I am talking about, you didn't say anything about a union?

Mr. Witt: He didn't say that.

Q. (By Mr. Witt). Let us ask the question again. What was it you said to Herbert Sands on this occasion?

A. I asked him why they were intimidating our men and working on the A. F. of L. in there when our agreement—when our committee had an oral agreement with the management that they would not sign up for fifteen days.

Q. This is an oral agreement?

A. Yes.

Q. It is not a part of this agreement dated June 15th?

A. No.

Mr. Stanley: Well, we really ought to have the conversations, the time, and who were present, if you have an oral agreement different from this.

Trial Examiner Danaceau: Well, let us see how it develops.

Mr. Witt: Let us see how it develops. We are not taking the position that this is an agreement by which the company was bound. We are just getting the background.

Trial Examiner Danaceau: Well, the conversation comes specifically under the Wagner Act.

Mr. Witt: We are not using it for that purpose.

Q. (By Mr. Witt). What was it you said to Herbert Sands again please?

A. I asked him why they were trying to intimidate our members and also trying to sign up new members when we agreed to not to for fifteen days.

Testimony of Charles E. Rudd

- Q. What was his reply?
- 197 A. He replied, "Better have the A. F. of L. in than the M.E.S.A."
- Q. Why?
- A. Because they were more conservative and didn't pull strikes on fifteen days.
- Q. What did you say to that?
- A. I said, "Because we can buy them."
- Q. You meant the A. F. of L.?
- A. Yes.
- Q. What was his reply to that?
- A. He said, "You can buy the M.E.S.A., too."
- Q. What was your response to that?
- A. I said, "Try it."
- Q. Do you recall during the month of this July this year, the men in your department were laid off?
- A. Yes.
- Q. About what date was that?
- A. July 11th.
- Q. How long were they laid off?
- A. Three days.
- Q. How many of them?
- A. Eight of them.
- Q. Do you remember their names?
- A. Yes, sir.
- Q. Will you give us their names?
- A. Joseph Wycichowski, Carl Frank, Stanley Dymidowski, William Siminuck, Henry Schilhorn, Joseph Vondra, Walter Bradley, and Clarence Wisnieski.
- 198 Q. How long were those eight men off that time?
- A. Three days.
- Q. Three days. Were they called back or did they apply after their jobs?
- A. They were all called back.
- Q. They were all called back?
- A. To my knowledge, except one.
- Q. What was that one exception?
- A. I don't know.
- Q. Seven were called back?
- A. Yes.
- Q. Who were they called back by, personal message, telephone, or by cards?
- A. By cards, I think.
- Q. Were those same men laid off again thereafter?
- A. Yes.
- Q. When was that?

Testimony of Charles E. Rudd

A. July 23rd.

Q. Who laid them off then?

A. I did.

Q. Did any of the management tell you to lay them off?

A. Yes.

Q. Who was that?

199 A. Herbie Sands.

Q. What did he tell you?

A. He told me to lay them off until further notice.

Q. Did you put a notice up on the time clock at that time?

A. No, sir.

Q. Did you tell each of the men individually?

A. I did.

Q. You told them what?

A. I told them they would be laid off until further notice.

Q. Thereafter was there any notice on the time clock laying off employees in other departments?

A. Yes, sir.

Q. About when was that, can you tell us?

A. The notice was put up about July 27th or 28th, I think—or the 29th. I wouldn't say. A day or two before the layoff.

Q. When was that layoff?

A. July 30th.

Q. Do you remember how the notice read?

A. Nearly, not exactly word for word.

Q. Will you give us your best recollection?

A. The employees above the number of thirty-one would be laid off Tuesday evening and the balance of the employees Friday.

Q. What day of the month was Tuesday, do you remember?

200 A. I don't recall.

Q. You don't recall?

A. No.

Q. Would you say it was the last Tuesday in the month?

A. Yes.

Q. Thereafter, did any more notices go up on the time clock with respect to layoffs?

A. Yes, that notice was changed.

Q. The notice you just talked about was changed?

A. After July 30th, the notice was changed and the factory worked three days a week.

Testimony of Charles E. Rudd

Q. Will you give us the form of the notice again that you just said?

A. That all men from number thirty-one up would be laid off and the balance of the shop would be laid off Friday evening.

Q. You say that notice was later changed?

A. Later changed.

Q. What was it changed to?

A. That the shop would work three days a week; that was after the layoff.

Trial Examiner Danaceau: After both layoffs?

The Witness: After July 30th.

Trial Examiner Danaceau: Between the Tuesday and Friday?

The Witness: Between Tuesday and Friday the notice was changed.

Mr. Witt: I think, Mr. Examiner, that the
201 calendar will show that the last Tuesday was July 30th and the Friday thereafter was August 2nd.

Q. (By Mr. Witt). Were there any more notices thereafter?

A. I don't recall any more notices, only the three day a week notice until I come in from Joe Sand's house.

Q. Were you working in the factory in August?

A. Yes, partly.

Q. Until what day in August?

A. I couldn't say exactly the day. I think it was the 15th of August.

Q. At any rate, are you sure it was before the 20th of August?

A. Yes.

Q. You were working where did you say at that time?

A. At what time?

Q. I mean after the 15th of August?

A. Joe Sand's house.

Q. Joe Sand's house. When did you first come back to the plant after you left?

A. The first Monday after the 21st.

Q. The first Monday after the 21st?

A. Yes.

Q. I think the calendar will show that was August 26th. Did you see any notice on the time clock on that day?

Testimony of Charles E. Rudd

202 A. I did.

Q. Do you remember the form of that notice?

A. Yes, sir.

Q. What was the form?

A. The plant will shut down Wednesday night until further notice.

Q. I think the calendar will show that that notice was on Wednesday night, which was the 21st. Do you remember the date of that notice?

A. August 21st.

Q. Did you notice any time cards in the rack?

A. Five.

Q. There were five?

A. Yes, sir.

Q. Do you remember whose?

A. Two watchmen, two Carbecks and myself.

Q. Will you give us the names of the two watchmen?

A. August Gardell and James Janousek.

Q. Did you work in the plant on August 26th?

A. I did.

Q. Did you work in the plant thereafter?

A. I worked in the plant on Wednesday and Thursday of the same week.

Q. Did you work in the plant on Friday that week?

A. No, sir.

Q. Were you on the payroll on Friday that week?

203 A. Yes, sir.

Q. Were you working for the company at that time?

A. I was at Joe Sand's house.

Q. Until when did you work out at Joe Sand's house?

A. On December 4th.

Q. Were you paid off?

A. Yes.

Q. Who paid you off?

A. Herbie Sands.

Q. Did he tell you anything when he paid you off?

A. He said that has nothing to do with the job.

Q. Did he tell you when he would call you back to the shop?

A. He said the shop was doing nothing; "We will let you know."

Q. What local of the M.E.S.A. are you a member of?

A. Local 22.

Testimony of Charles E. Rudd

Q. You are an officer of that Local?

A. Yes, sir.

Q. What position do you hold?

A. Financial Secretary.

Q. Does that Local include only members of the M.E.S.A. who are employees of the Sands Manufacturing Company?

A. No, sir.

Q. Does it include employees of other companies?

A. Yes, sir.

Q. All in Cleveland?

204 A. Yes, sir.

Q. Can you tell us about how many?

A. Offhand, between three or four hundred outside of Sands.

Q. Since when have you been Financial Secretary of Local 22?

A. March 7th.

Q. March 7th of what year?

A. 1935.

Q. As Financial Secretary, have you kept the membership books of the Local?

A. Yes, sir.

Q. You have the membership books here with you today?

A. Yes, sir.

Q. Can you tell us, looking at that membership book, how many employees of the Sands Manufacturing Company were members on June 17th, 1935, amongst those working in the plant?

A. Yes, sir.

Q. How many?

A. Fifty-one.

Q. Fifty-one?

A. Fifty-one or two, about fifty-one.

Q. Fifty-one you think is correct?

A. Yes.

Q. Will you tell us whether the following were members on June 17th, 1935?

205 Mr. Stanley: Oh, we will object to that. Let us have the books.

Trial Examiner Danaceau: I take it you want the list of the members?

Mr. Witt: No; we don't. We will give him the right to cross examine on these books.

Trial Examiner Danaceau: Are you going to read all of them?

Testimony of Charles E. Rudd

Mr. Witt: We are not going to read the entire list. Just read a few names; in other words, a few of the witnesses who are not obtainable. We expect to prove the membership in two ways, by books and witnesses.

Trial Examiner Danaceau: If it is material.

Mr. Witt: It is material, very material.

Trial Examiner Danaceau: Let us proceed then.

Q. (By Mr. Witt). Will you tell us whether the following were members on June 17th, Paul Bandt?

Mr. Stanley: I object to that. Their membership is made up in a good many ways and, of course, we should have the evidence rather than the conclusions.

Trial Examiner Danaceau: Well, he has testified that he has the membership books here and he is the Financial Secretary.

Mr. Stanley: What I am thinking of is this. Suppose in this case it should develop that the man was a member and joined, let us say, in the fall of 1934 and nothing further is adduced, he might be
206 considered as always a member.

Mr. Witt: We are going to develop all of that.

Mr. Stanley: No; that is not it. I can't see how you could take a witness's statement that a man is a member and if it comes to an issue, there are certain men here that I think the evidence will show were members of the M.E.S.A. at one time and then members of the A. F. of L. at another time. Certainly we do not want a conclusion that the man was a member and be bound by that; his testimony would be the evidence.

Trial Examiner Danaceau: I think from this that he is getting the testimony from his record instead of submitting the entire record at this time. He is responding to the question from the record and he testified that he is in a position of Financial Secretary.

Mr. Stanley: Yes; I appreciate that.

Trial Examiner Danaceau: I will allow the evidence for what it is worth, coming from the Financial Secretary and his records.

Mr. Stanley: If you know the elements that make it up—

Trial Examiner Danaceau: We will go into that later on, if necessary.

Mr. Witt: Of course, he has the right to cross examine.

Q. (By Mr. Witt). Can you tell us whether on June 17, 1935 the following were members of the M.E.S.A., Paul Brandt?

Testimony of Charles E. Rudd

A. Yes, sir.

Q. John Palko?

207 A. Yes, sir.

Q. Edward Klick?

A. Yes, sir.

Q. E. Syroski?

A. Yes.

Q. Joseph Vondra?

A. Yes, sir.

Q. James Janousek?

A. Yes, sir.

Q. And A., that is August Gardella?

A. Yes, sir.

Q. In addition to those seven, I understood you to say a minute ago that you had forty-four other members on June 15, 1935 amongst the employees of the Sands Manufacturing Company?

A. Yes, sir.

Q. Thereafter did any of the employees of the Sands Manufacturing Company become members of the union?

A. Yes, sir.

Q. How did they become members of the union?

A. Signed their application and paid their dues.

Q. Signed their application and paid their dues?

A. Yes, sir.

Mr. Stanley: We still further object that the applications are the best evidence and the books showing a payment of dues is the best evidence.

208 Trial Examiner Danaceau: Well, if it is necessary to have it introduced, we can have it introduced later on.

Mr. Stanley: May I inquire of counsel, are you relying upon this as showing that these men were members?

Mr. Witt: That's right.

Mr. Stanley: Then we object.

Mr. Witt: Now, just a minute, Mr. Stanley, except for this reason, we will specifically discuss those who are not fully paid members; we will develop that. The thing you are concerned with is on these books, whether they show they paid dues, you can cross examine those after you have examined them. There is nothing we can do as the best evidence in this issue are those books which are here, and they will show whether they paid the dues or not. If you want us to go through every name, we can do that.

Testimony of Charles E. Rudd

Trial Examiner Danaceau: The objection is overruled.
Mr. Stanley: We will except to it.

Mr. Witt: Let us begin again on this.

Trial Examiner Danaceau: Let us not begin on this.

Mr. Witt: I mean on the last question.

Q. (By Mr. Witt). After this, did any employees sign applications for the M.E.S.A.?

A. Yes, sir.

Q. Give us their names?

209 A. William Balcun.

Q. Signed an application?

A. Yes, sir. He paid for it and paid for his—

Mr. Stanley: After what date?

The Witness: After June 17th.

Q. (By Mr. Witt). The next name is?

A. Max Feinstein.

Q. The next name was Max Feinstein. He signed his application?

A. And paid his dues.

Q. Just answer the question. Did he sign an application?

A. Yes, sir.

Q. And paid his dues?

A. Yes, sir.

Q. The next one?

A. Joseph Kozlowski.

Q. Did he sign his application?

A. Yes, sir.

Q. Did he pay his dues?

A. No, sir.

Q. Did he pay his application fee?

A. Yes, sir.

Q. He paid his application fee?

A. Yes, sir.

Q. The next one?

210 A. Ed Syroski.

Mr. Stanley: He is one you gave of the seven.

Q. (By Mr. Witt). You said he was a member on June 17?

A. Oh yes.

Q. What is the next one?

A. Clarence Wisnieski.

Q. He signed his application?

A. Yes.

Q. He paid his application fee?

Testimony of Charles E. Rudd

A. Yes.

Q. Did he pay the dues?

A. No, sir.

Mr. Stanley: Isn't he one of the seven?

The Witness: Yes.

Q. (By Mr. Witt). C. Wiszinski was one of the eight?

A. In my department laid off.

Mr. Stanley: We are talking about becoming members after June 17th.

The Witness: Well, he did.

Mr. Stanley: You said previously this man was a member on June 17th?

The Witness: No.

Mr. Witt: He is one of the men in his department who was laid off in July, but he is not one of those he named as having or being a member on June 17th.

Q. (By Mr. Witt). What is your next name?
211 A. Joseph Wycichowski.

Q. He signed an application?

A. Yes, sir.

Q. Paid his application fee?

A. Yes, sir.

Q. Did he pay his dues?

A. No, sir.

Q. Any others?

A. Dave Healy.

Q. He signed an application?

A. Yes, sir.

Q. Pay his application fee?

A. Yes, sir.

Q. Pay his dues?

A. Yes, sir.

Q. Who else?

A. And Charles Rambisa.

Q. He signed his application?

A. Yes.

Q. Did he pay his application fee?

A. Yes, sir.

Q. Did he pay his dues?

A. No, sir.

Q. Any others?

A. No, sir; not paid applications.

212 Q. There are others?

A. Who signed their applications.

Q. Will you give us those?

Testimony of Charles E. Rudd

Trial Examiner Danaceau: These you are now giving us signed applications but did not pay dues?

The Witness: Yes.

Q. (By Mr. Witt). What are they?

A. Leonard Graulle, Charles Becka, George B. Serzik, Robert Hronek, A. Graulle.

Q. Mr. Rudd, was William Balcum a member on June 17th?

A. Yes, sir.

Q. And he was a member on June 17th?

A. Just a minute—no, sir; he was not paid in July.

Q. He signed an application thereafter?

A. Yes, sir.

Q. When did he sign the application?

A. In July.

Q. What month?

A. July.

Q. Did he pay his application fee?

A. Yes, sir.

Q. Did he pay his dues?

A. No, sir.

Q. Didn't pay his dues?

A. No, sir.

213 Q. We won't need the book now. Mr. Rudd, can you tell us the distinction between a member who has signed his application, paid his application fee, and paid his dues, between that kind of a member and the member that has paid his application fee without having yet paid his dues; is there any distinction?

A. Not in regard to any shop. The committee, they would go forward and pay his application as they would pay his dues.

Q. Would persons who paid applications without having paid dues, could they go to meetings of Local 22?

A. Yes, sir.

Q. Could they vote in Local 22?

A. I think they could; I didn't hear anything against it.

Q. Did they have a voice in it?

A. Yes, sir.

Q. Can you tell us any distinction between persons who paid their application fees without having paid dues and people who have merely signed applications without paying the application fees or dues?

Mr. Stanley: May I inquire whether there are any rules and regulations of this organization?

Testimony of Charles E. Rudd

Q. (By Mr. Witt). Does Local 22 have a constitution and by-laws?

A. Yes, sir.

Q. Have you a copy with you?

A. Yes, sir.

214 Q. Will you produce it please?

A. I don't think there is anything in that.

Q. Without referring to that, Mr. Rudd, just answer my questions.

Mr. Witt: Read the last question.

(Record read by the Reporter.)

Mr. Stanley: We object.

Trial Examiner Danaceau: He may answer if he knows.

A. Why, I couldn't say; never been brought up.

Q. People who have merely signed their application cards, have they a voice in meetings?

A. No, sir.

Q. They can attend meetings, however?

A. Yes, sir.

Q. They have no vote at meetings.

A. No, sir.

Q. Those people represented by a committee?

A. Yes, sir.

Q. They are represented by a committee?

A. Yes, sir.

Q. Does Local 22 have any rule with respect to members who are not employed or any rule with respect to payment of dues of those members?

A. Yes, sir.

215 Q. What is that rule, can you refer to the by-laws for that rule?

A. "Any member who has been unemployed for more than two weeks out of each month shall become eligible to have his dues cancelled, provided the member has notified his Local Office."

Q. What section in the by-laws were you reading from?

A. Article marked "Regulations for members," Section B, Article 4.

Q. Article 4, Section B. Were any of the members of Local 22 who were employees of the Sands Manufacturing Company suspended?

A. Yes, sir.

Q. After June 17, 1935?

A. Yes, sir.

Testimony of Charles E. Rudd

Q. Who were they?

A. Dave Healy, James Hlad, Charles Rembassa.

Q. Can you tell us when or during what period they were suspended?

A. They were suspended the first part of or the latter part of September.

Q. 1935?

A. Yes, sir.

Q. Can you tell us the reason for their suspension?

A. They were breaking line and going back to work.

Q. Does that mean they went back to work for the Sands Company?

216 A. Yes, sir.

Q. Mr. Rudd, were all the production employees of the Sands Manufacturing Company eligible to membership in the Local 22?

A. What was that?

(Last question read by the Reporter.)

A. Yes, sir.

Q. Were all of the maintenance employees of the Sands Manufacturing Company eligible to join Local 22?

A. They didn't have any at the time of our organization.

Q. Did you have any at the time after the organization?

A. Yes.

Q. Who were they?

A. Richard Spencer, Johnny Mantell, and Wilbert Spraggins.

Q. Who did they work for?

A. They worked for the Sands Realty Company.

Q. Doing what?

A. Maintenance work.

Q. Did the Sands Manufacturing Company employ any watchmen to your knowledge?

A. Yes, sir.

Q. Were they eligible to join the M.E.S.A.?

A. Yes, sir.

Q. Did they become members of the M.E.S.A.?

A. Yes, sir.

Mr. Stanley: Possibly I better look at the book before—

217 Trial Examiner Danaceau: You intend to submit the book in evidence?

The Witness: No.

Testimony of Charles E. Rudd

Mr. Witt: Obviously, he can't. This book includes the full membership of Local 22, which means it includes employees of other companies, and we are not willing to submit the entire book. We are only willing to submit the cards of the employees of the Sands Manufacturing Company.

Trial Examiner Danaceau: You are only interested in the Sands Manufacturing Company and the book contains in it a list of not only the employees of the Sands Manufacturing Company who are members of the M.E.S.A., but it covers three or four hundred others.

Mr. Stanley: I would like to look at it.

Trial Examiner Danaceau: I don't see what possible injury could happen if you examined the books. Do you have the Sands Manufacturing Company members segregated?

Mr. Witt: Yes.

Trial Examiner Danaceau: It is all in this first part here.

Mr. Stanley: I don't care about the rest of it.

Trial Examiner Danaceau: We will recess now and give you an opportunity to look it over.

(Recess had.)

Trial Examiner Danaceau: Are you ready, gentlemen?

Mr. Witt: Mr. Examiner, I have two or three
218 more questions that I wish to ask the witness, just to sum up what he has been testifying about.

Q. (By Mr. Witt). Mr. Rudd, did you tell us how many members you had on June 17, 1935 amongst the employees of the Sands Manufacturing Company?

A. Yes, sir.

Q. How many was that?

A. Fifty-one, I believe.

Q. And thereafter how many paid applications did you get?

A. I think it is seven.

Q. You have given us all their names?

A. I think so.

Q. How many unpaid applications did you get thereafter?

A. Five.

Q. Five. That is all. And you have given us their names? You have given us their names?

A. Yes.

*Testimony of Charles E. Rudd***CROSS EXAMINATION**

Q. (By Mr. Stanley). I hand you a book which you handed to me, called the Constitution and By-laws of the Mechanics' Educational Society of America, Revised and adopted at the convention in Detroit, May 24th, 25th, 26th, 27th, 1934. Sanctioned by the Local Delegates at Interstate Meeting, July 28th, 1934. Is this that constitution?

219 A. Yes, sir.

Q. Now, you say that you worked in various departments, the stock department made up of men who looked after the keeping of the stock and the records of it, very largely; wasn't it?

A. Yes, sir.

Q. The watchmen simply looked after the physical care of the building?

A. Yes, sir.

Q. That is correct; isn't it?

A. Yes, sir.

Q. The shipping department took care of the shipping of goods?

A. Yes, sir.

Q. Now there was a good deal of assembly work done there, wasn't there, in the shop?

A. Yes, sir.

Q. In what departments?

A. In all of the departments.

Q. In all of the departments?

A. All except the shipping room.

Mr. Stanley: We desire to read into the record Article 2 of Section 1, "Membership. All persons whose normal occupation is in the manufacture or repair of tools, dyes, jigs, fixtures, and machinery, shall be eligible for membership in Number 1 Section of this Society. Section 1A. Only persons working in or about machine production or assembly shall be
220 eligible for membership in Section 2 of this Society."

Q. (By Mr. Stanley). Now, coming to this list of these cards, you started out as a member, you personally started out as a member when?

A. April, 1934.

Q. Were you a foreman then?

A. Leader.

Q. Well, your duties, I mean, were the same as a leader, as a foreman?

Testimony of Charles E. Rudd

A. Yes, sir.

Q. So you better use the name of foreman because we generally know what the duties of a foreman are! You were a foreman in what department?

A. The tank heater.

Q. You had how many men under you?

A. When the department was running, nine.

Q. You continued as a foreman as long as you have been employed there?

A. Yes, sir.

Q. Ever since?

A. Yes.

Q. Even when the layoff came in August, on August 21st, you continued to work in the shop?

A. Three days.

Q. For three days, doing what kind of work?

A. Making up heaters.

221 Trial Examiner Danaceau: That is assembling?

The Witness: Assembling and crating.

Trial Examiner Danaceau: Assembling and what?

The Witness: Crating.

Q. Crating?

A. Crating.

Q. And when that work ran out, one of the officers of the Sands Manufacturing Company gave you employment at home, at his home?

A. Yes, sir.

Q. There apparently were some men put on in July of this year; weren't there?

A. Yes, sir.

Q. At about what time?

A. Well, I wouldn't say whether there were any put on in July; I think in June.

Q. The latter part of June?

A. Yes, sir.

Q. About how many?

A. About thirty.

Q. Trial Examiner Danaceau: For the purpose of clarification, that is in addition to the employees already there?

The Witness: Yes, sir.

Q. (By Mr. Stanley). That made a total working force of how many?

222 A. Eighty-four, I believe.

Q. Some of those men had been employed in the fall of 1934?

Testimony of Charles E. Rudd

A. No, sir.

Q. They were employed in all departments?

A. Yes, sir.

Q. Several of those men became members of the M.E.S.A.?

A. Yes, sir.

Q. You and other officers of the M.E.S.A. solicited them to become members?

A. I didn't.

Q. But you knew about it?

A. Yes, sir.

Q. Apparently, from your testimony, officers of the M.E.S.A. were soliciting these men to become members; that is correct?

A. That is correct.

Q. Now, did new men go into your department?

A. Yes, sir; not in the departments, during the noon hour and in the morning.

Q. I mean some of the new men went into your department?

A. Yes, sir.

Q. How many of them?

A. Two.

Q. They became members of the M.E.S.A.?

A. Yes, sir.

Q. They were scattered pretty much in all
223 the departments?

A. Yes, sir.

Q. About how many of those thirty joined the M.E.S.A.?

A. Twelve, I believe.

Q. I beg your pardon?

A. Around twelve, I believe, signed applications and paid.

Trial Examiner Danaceau: I think he testified that seven paid and five additional signed applications but did not pay dues.

Q. (By Mr. Stanley). Now, some of them, to your knowledge, joined the A. F. of L.?

A. Not to my knowledge. I heard that they did.

Q. But the word came to you, I take it, because you went to Mr. Sands and made some complaint in connection with that?

A. Yes, sir.

Q. How many did you hear joined the A. F. of L.?

A. Sometimes I heard six and sometimes twelve.

Testimony of Charles E. Rudd

Q. You didn't object to that?

A. No, sir.

Q. I beg your pardon?

A. No, sir.

Q. You didn't represent them?

A. No, sir.

Q. The M.E.S.A. didn't?

A. No, sir.

Q. Now how many foremen of the Sand
224 Manufacturing Company were members of the
M.E.S.A.?

A. All but one.

Trial Examiner Danaceau: How many are there?

The Witness: Well, that depends on whether you
would call some of them foremen or not.

Q. (By Mr. Stanley). To your mind, give us the
names of those you regard as foremen?

A. Well, I only regard two of them as foremen.

Q. I beg your pardon?

A. I only regard two as foremen.

Q. Who are they?

A. The coil room and the automatic.

Q. Who was employed in the coil room?

A. Elmer Farrell.

Q. Who in the other department?

A. Frank Dolish.

Q. Who were the other men that were foremen in
the plant?

A. The stock keeper.

Q. Who was that?

A. William Brandt.

Q. The gentleman who was on the stand?

A. Yes.

Q. Would you regard him as a foreman?

A. Yes, in a way, but I believe his title would be
stock keeper.

225 Q. But, at any rate, he was head of that de-
partment?

A. Head of that department.

Q. He belonged to the M.E.S.A.?

A. Yes, sir.

Q. Who did you regard as the head of the machine
shop?

A. George Carbeck, Junior.

Q. He never did join the M.E.S.A.?

A. No, sir.

Testimony of Charles E. Rudd

Q. Who was in the coil room?

A. Albert Farrell.

Q. You told us about that. In the automatic or instantaneous department?

A. Frank Dolish.

Q. You told us about him. Who was at the head of the storage department?

A. Well, just lately a man by the name of Stanley Linski.

Q. I am not talking about lately; I am talking about when this controversy was going on, during the spring of 1935.

A. Herbert Sands, the superintendent, was supposed to be in charge.

Q. Who under him?

A. I couldn't tell you.

Mr. Witt: What was that name?

The Witness: Herbert Sands.

Q. (By Mr. Stanley). You said superintend-
226 ent. You thought there was no foreman or head of that department. Who was head of the shipping room?

A. The assistant superintendent. I was told he was Edward McKiernan.

Q. Was he a member of the M.E.S.A.?

A. No, sir.

Q. The tank heater assembly, who was the head?

A. I was.

Q. Oh yes. That gives us four heads of the departments as members of the M.E.S.A. The sheet metal department?

A. Frank Panski.

Q. Was he a member of the M.E.S.A.?

A. Yes, sir.

Q. That gives us five. The tool room, who was head of that?

A. George Carbeck, Senior.

Q. He was not a member of the M.E.S.A.?

A. No, sir.

Q. Now, who is the Recording Secretary of this Local?

A. Edward Norman at the present time.

Q. Was he last spring?

A. No, sir.

Q. Who was then?

A. H. H. Garms.

Testimony of Charles E. Rudd

Q. They kept minutes of the meetings?

A. Yes, sir.

227 Q. And this gentleman whom you first mentioned has the minutes of the meetings?

A. Yes, until—

Q. Are they here?

A. No.

Q. Now, someone has said that at least on one occasion there was a meeting of the men employed by the Sands Manufacturing Company independent of the meeting of the Local; did you attend that meeting?

A. I did.

Q. And when was that?

A. I couldn't give you the exact date without looking at my records at home.

Q. Well, fix the time of the occurrence; was it before or after the strike of June 21st?

A. Before.

Q. Before.

Trial Examiner Danaceau: There was no strike June 21st.

Mr. Stanley: May 21st. Excuse me.

Q. (By Mr. Stanley). Were minutes kept of that meeting?

A. I have some that I have written myself.

Q. Are they here?

A. No.

Q. Will you bring them?

Mr. Witt: We object to that.

228 Trial Examiner Danaceau: What purpose have you in mind as to the minutes of that meeting?

Mr. Stanley: Well—

Trial Examiner Danaceau: We could have this hearing last until the 4th of July.

Mr. Witt: Let us have him tell us the issue. We will be satisfied if he does. He can't even tell us that.

Mr. Stanley: Have you seen them?

Mr. Witt: I don't have to see them, Mr. Stanley, and neither do you.

Mr. Stanley: Well, I don't want to go into that. The Court has asked me the purpose. All right. The charge is here that the company has violated the provisions of the Wagner Act, and the answer sets up that the action, that certain actions, arbitrary actions on the part of the officers of the M.E.S.A., of which you are quite familiar.

Testimony of Charles E. Rudd

Trial Examiner Danaceau: Whatever internal affairs they might have had which do not in any way bear on the Sands Manufacturing Company certainly is irrelevant.

Mr. Stanley: Oh yes, certainly. This is a meeting of the employees, only of the Sands Manufacturing Company, in connection with the strike. Now, I noticed in the regulations this paragraph; "No strike to be called until men involved in any shop or local have voted for strike action." Now, therefore, to pass upon the question, was the strike legal until legally
229 called, might it not be very well, in the issues here asked, that they acted arbitrarily and certainly arbitrarily if they didn't come within the provisions of their own legislation. Here we are contracting, have to contract with an organization, presumably that organization operates within its own rules—and the officers operate in opposition to its own rules, and it seems to me to come within the case.

Trial Examiner Danaceau: My recollection of the answer where it sets up the employees acted arbitrarily, my recollection is that it had reference to their actions in the shop and their duty to the employer. That hasn't anything to do with the internal affairs of the organization.

Mr. Stanley: It certainly has a bearing on the company by calling a strike.

Trial Examiner Danaceau: At this time I don't see any relevancy of the minutes of their meeting. Nothing that went on in their own internal meeting has any bearing; the same as if the Sands Manufacturing Company had a board of directors meeting and you were asked for the minutes. My ruling at this time will be to sustain the objection. It is possible that upon development of the case there might be something that might cause relevancy, but at this time I don't see it.

Q. (By Mr. Stanley). We request the witness to produce his minutes of the meeting just prior to the strike of May 21st, 1935?

230 A. Well, we will not answer to that.

Q. A meeting held at that time in connection with the strike on the Sands Manufacturing Company?

Mr. Witt: We object to that.

Q. (By Mr. Stanley). Of the employees of the Sands Manufacturing Company, to which meeting the witness has heretofore referred?

Trial Examiner Danaceau: Have you any such minutes?

A. The Witness: Nothing, only the vote that was taken.

Trial Examiner Danaceau: Just the vote that was taken?

The Witness: That is all. It was written in a notebook.

Mr. Witt: Mr. Examiner, we object to even this going into the record at this time. It has no issue in the case, not raised by the pleadings, and we see no reason for it.

Trial Examiner Danaceau: I will let it stand so far as he has answered. I don't at this time see just where we are going on any further questioning along that line.

Mr. Stanley: Well, we except.

Q. (By Mr. Stanley). Was there a meeting of the men on or about June 3rd to 5th; by the men I mean the employees of the Sands Manufacturing Company?

A. No, sir.

Q. Was there any meeting between the meeting to which I first referred to and June 5th?

A. Yes, there was a meeting.

231 Q. Where was that meeting?

A. In back of the Sands Manufacturing Company in an empty building.

Q. Were you there?

A. Yes, sir.

Q. How many employees of the Sands Manufacturing Company were there?

A. All of them were there.

Q. This was at the time when the strike—when the first strike, as we will call it, was in progress?

A. No—yes; it was in regard to the settlement.

Q. And at that meeting were the men back at work?

A. No.

Q. This was before they went back to work?

A. Yes, sir.

Q. They went back to work on what date?

A. On a Monday.

Q. June 3rd?

A. Yes, sir.

Q. And this occurred when?

A. I think it was a Saturday. I am not sure.

Trial Examiner Danaceau: Before or after?

The Witness: Before.

Trial Examiner Danaceau: That would make it then

232 not June 5th but 1st.

Q. (By Mr. Stanley). The 1st, yes. I had said the 5th, about the time they went out the second time, and the terms of the settlement were then discussed, were they?

A. Yes.

Trial Examiner Danaceau: Speak up so the Reporter can hear it.

Mr. Stanley: I better speak up and maybe he will do so.

Q. (By Mr. Stanley). Had you been present at the conference?

A. Yes, sir.

Q. Between the company and the committee?

A. No, sir.

Q. But you had heard from the committee the results of that conference?

A. Yes, sir.

Q. Now we are referring now to the conference at which the Federal Conciliator was present; is that right?

A. Yes, sir.

Q. And the committee reported what to be the result of that conference?

A. Reported that we were to go back to work on Monday with two cents an hour increase, with a ten percent already granted to new men.

Q. That is ten percent had been granted before the strike?

A. Yes.

233 Trial Examiner Danaceau: Pardon me. It is five after twelve and we will adjourn until one o'clock.

(Conversation had off the record.)

(Thereupon, at 12:05 o'clock p. m. a recess was taken until 1:30 o'clock p. m.)

AFTER RECESS

(The hearing was resumed at 1:30 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner Danaceau: Gentlemen, let us proceed.

Mr. Stanley: The Court Reporter has a constitution and by-laws which is exactly the same, he tells me, as the one we introduced, without the memorandum of

Testimony of Charles E. Rudd

the witness, so we offer this in connection with our cross examination.

Trial Examiner Danaceau: I don't recall anything being introduced. I think some reference was made from it.

Mr. Stanley: That's right. We haven't up to this time, but I am now offering it in connection with the cross examination. I am doing so now.

Mr. Witt: Let us compare it. That is your exhibit?

Mr. Stanley: Yes, that is.

Trial Examiner Danaceau: Will the Reporter mark that as Respondent's Exhibit No. 6 and it will be admitted in evidence.

(The book referred to was received in evidence and marked Respondent's Exhibit No. 6, Witness Rudd.)

CHARLES E. RUDD,

the witness on the stand at the time of recess,
234 resumed the stand and testified further as follows:

CROSS EXAMINATION (Continued)

Q. (By Mr. Stanley). In the testimony in connection with your complaint to Mr. Herbie Sands, you referred to Section 12 and I think we can probably clear that up. Section 12 provides that the company shall have the right to discharge employees within fifteen days after their employment?

A. Yes, sir.

Q. Now you said it was your understanding of the contract that men should not join within fifteen days of their employment?

A. Yes, sir.

Q. Or something to that effect. Really what you meant is this, isn't it, Mr. Rudd, that if a man did join within fifteen days, the union could do nothing for him in the way of retaining him in his employment?

A. That is not my understanding.

Q. Within the fifteen days?

A. No, sir; that is not my understanding.

Q. I simply want to reconcile your statement—

-- Trial Examiner Danaceau: I think the witness made a statement that that was an oral agreement in addition to this written agreement.

Testimony of Charles E. Rudd

Mr. Stanley: I was trying to reconcile his statement with the written provision. I thought that would be his recollection of it.

235 Mr. Witt: I think we can show that by one of our committeemen instead of Mr. Rudd. We will clarify that. All you want is a verification of that?

Mr. Stanley: Yes.

Q. (By Mr. Stanley). The next sentence reads this way, "After fifteen days, the employee in question shall be granted a hearing before the shop committee and the management." Well—your complaint to Mr. Herbie Sands was that the A. F. of L. union was soliciting new employees to become members?

A. Yes, sir, and the old.

Q. And within the fifteen day period?

A. Yes, sir.

Q. And you thought the agreement was as between the M.E.S.A. and the company that the M.E.S.A. would not solicit within fifteen days and that ought to be binding also on the A. F. of L.?

A. Absolutely.

Q. That was really the substance of your complaint?

A. Yes, sir.

Q. Now, that was really the substance of your complaint?

A. Yes, sir.

Q. Now, you thought that the company should do something in restraining the A. F. of L. from soliciting within the fifteen days in order to make an equality between the M.E.S.A. and the A. F. of L.; wasn't that right?

A. Yes, sir.

236 Q. Really your complaint was against the A. F. of L. in the first place for doing it and, secondly, a demand, really, upon the company to see that the A. F. of L. did keep within the same limits as the M.E.S.A.; isn't that it?

A. Yes, sir; as they expected us to live up to it.

Q. Now the numbers—I mean the card numbers or shop numbers of the employees up to thirty or thirty-one were all the employees, the old employees, prior to the Government order; weren't they?

A. Yes, sir.

Q. And the layoff that you speak of or where notice was given in the summer of 1935 didn't disturb these

Testimony of Charles E. Rudd

old employees but did lay off the newer employees; isn't that right?

A. On July 30th.

Q. Yes.

A. Yes, sir.

Q. If that was the date. The old employees up to the number thirty-one, let us say, were all really charter members of the M.E.S.A. or old members, at any rate; that is true, isn't it?

A. Yes, sir.

Q. Whereas the newer employees were some of the members of the M.E.S.A. and some of the A. F. of L.; that is true, isn't it?

A. After June 17th; yes, sir.

Q. That is true?

A. Yes, sir.

237 Q. Really, we have three classes with which we are dealing with, those employed before the Government order as the first class?

A. Yes, sir.

Q. And the second class were those employed commencing with the Government order and who had been intermittently at work since the Government order?

A. Yes, sir.

Q. And the third class some entirely new employees since the cessation of the strike, namely June 17th?

A. Yes, sir.

Q. Now, of course, you have been quite active with the work of the M.E.S.A. from time of your becoming Financial Secretary of that Local Union?

A. Yes, sir.

Q. And you were, after Mr. Potter left the employ of the company, you were the contact man, really, at the Sands factory?

A. Yes, sir.

Q. With the Local Union?

A. Yes, sir.

Q. If a strike was in progress at other plants and pickets were needed, for instance, they would call you and suggest that you get pickets, for instance?

A. Yes, sir.

238 Q. I am not criticizing you at all; just trying to get the facts; isn't that true?

A. Yes, sir.

Q. And that was done rather frequently in the plant of the company; wasn't it?

Testimony of Charles E. Rudd

A. No; I don't think it was.

Q. You did a good deal of telephoning from there with the entire knowledge and the acquiescence of the employer; wern't you?

A. Not a great deal with regards to the union.

Q. Well, there was some of that?

A. Yes.

Q. Nobody ever objected to your doing it at all?

A. No, sir.

Q. Now, in reference to when this layoff came—oh, July—at that time there had been prior conferences with and between the shop committee and the employer; hadn't there?

A. There was one just before the layoff.

Q. In which the shop committee was informed and the Conciliator was about the situation in regard to their being slow, a slackness in work; that is true, isn't it?

A. Yes, sir.

Q. And this method of the layoff, of laying off those who had been employed since the Government order, was one suggested by the shop committee; was it not?

39 A. The one prior to the Government order?

Q. Strike it out and let me ask you this question. In the selection of those to be laid off, the committee suggested that if there was to be a layoff, it should be those who had been employed after the Government order?

A. They were all included.

Q. Well, they didn't lay off those before the Government order?

A. Not before the Government order.

Q. I am saying all those employed after the Government order?

A. All those employed at the time of the Government order.

Q. At the time of the beginning of the Government order?

A. Yes, sir.

Q. So we get it clear. The committee's suggestion was that those who were employed at the time of the Government order or after it?

A. I couldn't answer it.

Mr. Witt: If it please the Examiner, we are not making an objection to this, this is all hearsay and we

Testimony of Charles E. Rudd

will have the committeemen on the stand and you can get it through them.

Trial Examiner Danaceau: He already said he didn't know.

Mr. Witt: I don't mean on this question but the whole line of questioning between the relationship of the company and the committee.

Trial Examiner Danaceau: This witness is not
240 a member of the committee, as I understand.

Mr. Witt: He is an official of the union. He didn't negotiate anything at the conferences.

Mr. Stanley: All right.

Q. (By Mr. Stanley). You said you were present at a meeting held in the vicinity of the plant at the time of the calling of the strike of May 21st?

A. Yes, sir.

Q. Were you present at the beginning of the strike or about June 5th?

A. Yes, sir.

Q. Was there a meeting then?

A. We met in the morning.

Q. What? I beg your pardon?

A. We met as we came to work in the morning.

Q. Was there a meeting?

A. No, sir.

Q. That was a discussion by the shop committee, was it not?

A. Yes, sir.

Q. And the shop committee ordered the men out?

A. Yes, sir.

Q. That shop committee—well, you were there with the shop committee?

A. Yes, sir.

Q. The shop committee consisted of how
241 many?

A. Four men.

Q. And yourself?

A. Yes, sir.

Q. Anybody else?

A. Yes, there were others there.

Q. Well, was Mr. Potter there?

A. No; he was not.

Q. At what time was it that these two men, Harry Gassell and Moritz were expelled from the union?

A. Friday night following the first strike.

Q. They objected to the first strike, as I gathered the testimony of someone here; is that right?

Testimony of Charles E. Rudd

A. Mr. Gassell did, but not Moritz.

Q. Moritz did?

A. No; Gassell did.

Q. Gassell did and Moritz did not?

A. Yes.

Q. That was the reason for his discharge from the union; is that right?

A. Yes, sir.

Q. What was Moritz's offense?

A. He was automatically out for non-payment of dues.

Q. That was the only reason?

A. Yes, sir.

Q. How many relatives were there of Carbeck's that were referred to in this contract?

A. Only one that I know of.

Q. Who is that?

A. Harry Gassell.

Q. Oh. So he was discharged in two paragraphs, really, if he is the one?

A. Yes, sir.

Q. Well, now, was that because this sixteenth paragraph of Carbeck's relatives being discharged immediately, was that because they were relatives of a boss or of a foreman?

A. No.

Q. How?

A. No.

Q. Why was it?

A. Because they were opposing members of our organization.

Q. Oh, I see. The Carbecks and their relatives were not members of the M.E.S.A.?

A. Gassell was.

Q. But the Carbecks were not?

A. No.

Q. You had no objections to relatives of a foreman being employed?

A. No, sir.

Q. Is it a usual and customary thing with the M.E.S.A. that foremen become members?

243 A. No; it is not.

Q. You yourself are an old A. F. of L. man; are you not?

A. Yes, sir.

Q. What union did you belong to?

Testimony of Charles E. Rudd

A. I belonged to the Painter's Union.

Q. For how many years?

A. Well, I belonged to them before the war and then I got an honor card and I belonged to them in the West again after the war and I dropped out.

Trial Examiner Danaceau: What?

The Witness: I dropped it in the West.

Q. (By Mr. Stanley). How long were you a member in the Painter's Union?

A. I was only working member for about three years; actually belonged to the union about twelve years.

Q. That is the Painters' and Decorators' Union which is affiliated with the American Federation of Labor?

A. Yes, sir.

Q. It is a universal rule there, is it not, that foremen do not belong to the union?

A. No. Foremen belong there. The foreman I worked for belonged to it.

Q. Is it so in industrial matters in the shop?

A. No, not as a usual habit.

Q. That is true with M.E.S.A. you say?

244 A. I don't think so. We accept them, but as a usual thing they do not belong.

Q. This is painting work that you were doing at the home of one of the Sands; wasn't it?

A. Yes, sir.

Q. You were friendly with the Sands?

A. Yes, sir.

Trial Examiner Danaceau: Speak up louder please.

Q. (By Mr. Stanley). Before you came to the Sands, had you had any machinist experience at all?

A. No, sir.

Q. Did you ever work in the shop before?

A. Yes, sir.

Q. What kind of a shop?

A. The Kuhlman Car Company.

Q. Doing what kind of work?

A. Spraying.

Q. Painting and spraying paint?

A. Yes, sir.

Q. You are not a machinist?

A. No, sir.

Mr. Stanley: I think that is all.

Testimony of Charles E. Rudd

Trial Examiner Danaceau: Is there anything else in this witness?

Mr. Witt: Yes.

RE-DIRECT EXAMINATION

245 Q. (By Mr. Witt). Mr. Rudd, you have mentioned this oral agreement with respect to non-solicitation during the first fifteen days of employment of new employees?

A. Yes, sir.

Q. Was that agreement made with the company or made with the members or officers of the A. F. of L.?

A. Made with our committee and the company.

Q. So far as you know?

A. As far as I know.

Q. You were a member of the committee which made this agreement?

A. No, sir.

Q. Do you recall the date of the so-called second strike, Mr. Rudd?

A. I think it was the morning of June 6th.

Q. June 6th. What day of the week would that have been?

A. Thursday morning.

Q. As far as you know, or do you remember, did most or all of the employees of the company show up at the plant that morning?

A. They all did.

Q. All of the employees of the company showed up at the plant the morning of June 6th when this second strike was called?

A. Yes, sir.

Q. Do you recall whether all members of the
246 committee were there?

A. Yes, sir.

Q. Do you recall whether the question of a strike was discussed?

A. Yes, sir.

Mr. Stanley: Wait a minute. Between whom?

Q. (By Mr. Witt). Between the committee and the employees?

A. Yes.

Mr. Stanley: Well, you have gone over that, on both direct and cross examination.

Trial Examiner Danaceau: Well, there has been some questioning on it.

Testimony of Charles E. Rudd

Mr. Witt: We want to clarify the record on it.

Trial Examiner Danaceau: Unless you go into it too much—

Mr. Witt: Just clarifying it.

Trial Examiner Danaceau: Don't go over the same testimony. Proceed.

Q. (By Mr. Witt). When you said a moment ago in answer to one of Mr. Stanley's questions that there was no meeting, did you mean there was no formal meeting with a chairman and so forth; the meetings you usually have?

Mr. Stanley: Oh, I object to that.

Trial Examiner Danaceau: The form of the question is a little leading. What kind of a meeting did you mean?

247 The Witness: Just met on the corner and decided not to go to work until our other seven men were taken back as the agreement called for.

Q. (By Mr. Witt). All the members of the M.E.S.A. who were employees of the company were there?

A. Yes, sir.

Q. Did any employees object at that time?

A. No, sir.

Q. No employees objected?

A. No, sir.

Q. Was Mr. Gassell still a member of the M.E.S.A. when the first strike was called?

A. Yes, sir.

Q. Did he picket during that strike?

A. No, sir.

Q. Do you know why he didn't picket?

A. Yes, sir.

Q. Why didn't he picket?

Mr. Stanley: Well, if it is a conversation of Gassell in our absence—

Mr. Witt: Well, we will ask him.

Q. (By Mr. Witt). How do you know—do you know why he didn't picket?

A. Yes, sir.

Q. How do you know why he didn't picket?

A. Because he said he had—

248 Q. Just a minute. Did he say it to you?

A. I stood alongside of him when it was said.

Q. What did he say?

A. He said if they had three or four more like himself, there wouldn't be any picket line.

Testimony of Charles E. Rudd

Q. At that time did he say anything about forming another union?

A. He did at the meeting.

Q. At what meeting?

A. The meeting previous to the strike.

Q. The meeting previous to the first strike?

A. Yes, sir.

Q. The meeting at which the first strike was voted on?

A. Yes, sir.

Q. You said a moment ago in answer to one of Mr. Stanley's questions that the M.E.S.A. wanted the Carbeck's relatives out because they were opposing the members of your organization; will you explain what you mean by opposing the members of our organization?

A. Intimidating them; trying to get them to join the A. F. of L.

Q. Will you explain what you mean by intimidating?

Mr. Stanley: Were you there when this occurred?

The Witness: No. They came to me and made the complaint.

249 Q. (By Mr. Witt). They came to you as Financial Secretary?

A. Yes, sir.

Q. The employees did?

A. Yes, sir.

Q. And they alleged that the Carbecks were intimidating them?

Mr. Stanley: Oh, I object to that.

Trial Examiner Danaceau: Under the peculiar rules that we have here, I will have to let that go in.

Mr. Stanley: I should not be impatient with the Examiner.

Trial Examiner Danaceau: It is all a question of reasonableness; no defined rules we can go on provided we do not go too far afield.

Mr. Stanley: I think we can go as far as hearsay, but any way, not conclusions of the hearsay.

Trial Examiner Danaceau: I imagine this particular type of hearsay would come within the admissibility rule.

Mr. Stanley: I am objecting now that he is asking whether or not—"Did they say they were intimidated?"

Trial Examiner Danaceau: Put a more proper question, which would be, "What did they say?"

Testimony of Charles E. Rudd

Mr. Witt: That is what I will ask Mr. Rudd.

Q. (By Mr. Witt). Just what did these men say to you?

A. One man said Carbeck asked him to join the A. F. of L.

Q. Anything else?

A. He gave me a line of conversation which took place. I couldn't remember word for word.

250 Trial Examiner Danaceau: Did he say anything about Mr. Carbeck threatening either of the men?

The Witness: No.

Q. (By Mr. Witt). Do you recall anything that the others said to you?

A. Why, they just told me they were in the machine shop and they were trying hard to sign up people in the A. F. of L.

Q. By they you mean they meant the Carbecks?

A. The Carbecks.

Q. Anything else that you recall that they told you about the Carbecks?

A. No; that is all that come to me.

Mr. Witt: That is all.

RE-CROSS EXAMINATION

Q. (By Mr. Stanley). Well, now, you objected to the Carbecks soliciting employees to join the A. F. of L.; is that right?

A. Yes, sir.

Q. Well, I am going to give you a chance to explain this eleventh paragraph of the contract which says, "That all new employees in the future shall have the right to join any labor organization any time they so desire."

A. Yes; but our committee had a contract with the company saying not within fifteen days.

Q. You thought it bound the A. F. of L.?

A. Absolutely. If we are not allowed to so-

251 licit, why should anybody else?

Q. All you complained about—we want to get this clear before we leave it—is that one or both of the Carbecks, who belonged to the A. F. of L., requested some new employees to join that union?

A. Yes; prior to the fifteenth day.

Q. Prior to the fifteenth day; that is right?

A. That's right.

Testimony of Charles E. Rudd

Mr. Sanley: I think that is all.

Mr. Witt: Just one other question, if you please, Mr. Examiner.

RE-DIRECT EXAMINATION

Q. (By Mr. Witt). These conversations that you had with other employees that you and I were just talking about a minute ago, were they before June 15th?

A. No, sir.

Q. Or after June 15th?

A. Yes, sir.

Q. They were after June 15th?

A. Yes, sir.

Trial Examiner Danaceau: Anything else?

Mr. Witt: That is all.

Mr. Stanley: Yes.

RE-CROSS EXAMINATION

Q. (By Mr. Stanley). I want to ask you one question about this meeting on the morning of June 252 6th; you met the committee?

A. Yes, sir.

Q. Out in front of the shop?

A. Yes, sir.

Q. And you and the committee discussed the facts that these seven or eight employees, former employees, had not been returned to work?

A. Yes, sir.

Q. Now how many people were there at that time when you discussed that with this committee?

A. There were approximately fifty employees there.

Q. All discussing that?

A. No; they weren't all discussing it.

Q. They were going to work?

A. They were going to work

Q. But who was in that discussion of this; that is what I am trying to get out?

A. The committee and I first, and the men as they came in.

Q. Let us get this right. You and the committee discussed it first and objected to the fact that these seven men had not returned to work; isn't that right?

A. Yes, sir.

Q. Then when the employees came to work you stated to the employees that you and the committee thought that the strike should keep on until these

Testimony of Charles E. Rudd

253 men should be returned to work; isn't that true?

A. Yes, sir.

Q. And that is all there was to it?

A. Yes, sir.

Mr. Stanley: That is all.

Mr. Witt: Did the men discuss it thereafter?

The Witness: Yes.

Mr. Witt: That is all.

RE-CROSS EXAMINATION

Q. (By Mr. Stanley). And some of them were for it and some were against it; isn't that right?

A. I don't recall—

Q. And some didn't express any opinion?

A. I don't recall anybody objecting to it.

Q. Some were in favor of it?

A. Some in favor of it.

Q. Let us see about this one fellow, Gassell, he was not in favor of the first strike?

A. Yes.

Q. I thought you said that he said before the first strike occurred that if there were three more like him, he would stop all picketing?

A. Yes, he did.

Q. And he was still in favor of it?

A. Yes, sir.

254 Q. Well, I don't want to leave it there. There must be some more explanation than that. He couldn't be against a thing and in favor of it too?

A. He was one of the main reasons of the first strike.

Q. Well, that is interesting. What did he do?

A. He said if the M.E.S.A. couldn't do anything for him, they would form a company union.

Q. And he insisted on a strike?

A. He insisted that the M.E.S.A. do something for him.

Q. That would mean a strike; wouldn't it?

A. That led up to that.

Q. What period was it that he objected to the strike?

A. At the meeting, after the strike was called, when he came for his pay.

Q. He had changed his mind at that time?

A. Evidently.

Testimony of Tony J. Moraco

Q. Well, that explains it. At first he was very strong for the strike?

A. Yes, sir.

Q. And then he changed his mind and was against the strike?

A. Yes, sir.

Q. And then he was expelled?

A. Yes, sir.

Q. Then we have gotten it.

255 Trial Examiner Danaceau: Anything else of this witness?

Mr. Witt: That is all. Call Mr. Moraco.

Trial Examiner Danaceau: Before proceeding with the witness, may I urge upon both counsel for the respondent and the Government that you should avoid questioning on facts which are generally agreed between both parties so as to hurry it along and have more progress than we are having in the case. Matters that are not in dispute and matters that you can agree upon, let us avoid them and not quiz the witnesses on them.

Mr. Stanley: We will attempt to do that. There are some things I am just as much puzzled about in this testimony—that I have not heard about.

TONY J. MORACO,

called as a witness by the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Witt). Have you given your name and address to the Reporter?

A. Tony J. Moraco, 3403 Hancock Avenue.

Q. Mr. Moraco, were you employed by the Sands Manufacturing Company?

A. Yes, sir.

Q. When did you first begin to work for the company, do you remember?

A. January 5th, 1934.

Q. Have you been laid off?

A. Not until August 2nd.

256 Q. August 2nd of this year?

A. Yes, sir.

Q. You have never been laid off before?

Testimony of Tony J. Moraco

A. No, sir.

Q. What work did you do for the company, Mr. Moraco?

A. Well, if I told you I worked in different departments but my main work was in the shipping department.

Q. In the shipping department. Did you get work in the shipping department when you were laid off on August 2nd this year?

A. Yes, sir.

Q. Have you had any work since that layoff, Mr. Moraco?

A. I earned about forty-five dollars.

Q. A total of forty-five dollars?

A. Yes, sir.

Q. Are you working at the present time?

A. No, sir.

Q. Are you about to go to work?

A. Yes, sir.

Q. What kind of work are you about to do?

A. W. P. A. or P. W. A. I should say.

Q. Have you had any relief since you have been laid off?

A. Not myself.

Q. You say not yourself; you mean two members of your family?

A. Two members of my family.

Q. Are you a member of the M.E.S.A.?

257 A. Yes, sir.

Q. Were you a member of the M.E.S.A. before you were laid off?

A. Yes, sir.

Q. Were you a member of the shop committee?

A. Yes, sir.

Q. When did you become a member of the shop committee?

A. Oh, the early part of April some time.

Q. April this year?

A. 1934.

Q. 1934. Was that when the plant was first organized by the M.E.S.A.?

A. Yes, sir.

Q. You remained a member of the shop committee since then?

A. No, sir.

Q. There was a period when you weren't a member of the shop committee?

Testimony of Tony J. Moraco

A. Yes, sir.

Q. When was that?

A. I became a shop committeeman about the early part of May this year, 1935, possibly—

Q. You first became a shop committeeman this year or last year?

A. This year before the strike.

Q. Before the strike?

A. Before they had any difficulties.

258 Q. Were you a shop committeeman during 1934 at any time?

A. No, sir.

Q. During May of this year, did the committee make any demands upon the company of any kind?

A. Yes, sir.

Q. What were those demands, do you remember?

Mr. Stanley: Well, I think that is in evidence in the form of a written document.

Mr. Witt: Well, then, I will show it to him.

Trial Examiner Danaceau: You refer to the contract?

Mr. Witt: No; these are the demands.

Trial Examiner Danaceau: Written demands presented on June 15th?

Mr. Stanley: May 21st.

Q. (By Mr. Witt). Mr. Moraco, I show you Board's Exhibit No. 5; is this a copy of the demands that you signed as a member of the committee on the Sands Manufacturing Company on May 13th, this year?

A. Yes, sir.

Q. Will you read the demand with respect to wages?

A. "That all old employees be given a five cents per hour increase in pay."

Q. Read the next?

A. "All men who are classified as new men and who have worked in the factory for a period of
259 thirty days or more since August, 1934 shall be given eight and a half cents per hour increase in pay."

Q. Did the company make an answer to this wage demand?

A. Will you please repeat that question?

Q. Did the company make an answer to those wage demands which you just read?

A. Well—

Q. Did the company grant those demands?

A. They didn't grant those demands, no.

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

202

38-99



Testimony of Tony J. Moraco

Q. What was their answer to those demands?

A. If I told you plainly, their answer was they couldn't see any raise when we first come in there.

Q. Did they change that position at a later time?

A. Yes, sir.

Q. What did they then say?

A. They finally decided they could possibly give us two cents.

Q. Was that acceptable to the membership?

A. No, sir.

Q. And what did you do; decided to do what?

A. We decided to bring this back to the membership and see what the membership decided to do.

Q. Did you do so?

A. Yes, sir.

Q. Had a membership meeting that you took the company's answer back. Did you have a meeting with the members of the M.E.S.A.?

260

A. In the morning.

Q. In the morning of what day, do you remember?

A. We had a meeting—now, wait a while—I think it was the night before, the night before we had a meeting.

Q. The night before what?

A. It must have been the night before the thirteenth.

Q. Before the 13th of May?

A. No; the night before the 21st of May, before we went out on strike.

Q. Before you went out on strike. What happened at that meeting?

A. We told them—I am not so sure whether that meeting was back in that empty shop or not; I don't remember; I am not so sure about that.

Q. Was a strike vote taken at that meeting?

A. There was no strike vote taken at that meeting.

Q. What happened at that meeting?

A. If I remember right, that most of the men resented that two cents was enough for them.

Q. What did they decide to do?

A. They didn't decide to do anything at the time.

Q. Was there another meeting after that?

A. We did go in the office in the morning.

Q. What morning was this?

261 A. That was the morning of the 13th; I mean, the morning of the 21st.

Q. When you say, "We went in," you mean the committee went in?

Testimony of Tony J. Moraco

A. Absolutely.

Q. To the management?

A. To the management; that's right.

Q. What happened then?

A. We conferred on this subject about an increase in pay, and I think it was finally decided that all the management could see was that two cents.

Mr. Stanley: I didn't get that.

Trial Examiner Danaceau: "I think it was finally decided that all the management could see was the two cents."

Q. (By Mr. Witt). Did the committee report back to the men?

A. Yes.

Q. What did the committee decide to do?

A. The committeemen reported back to the men in the lunch period.

Q. What did the men decide to do?

A. The men refused to accept.

Q. What did they decide to do?

A. They decided to walk out immediately.

Q. This was on what day, do you remember?

Mr. Stanley: Well, now, the men refused to accept and what they decided to do, it was a meeting—
262 I think we should have more than that. Was it a vote?

Mr. Witt: That is all right. You can ask him. We are not going to ask him what time this was. Repeat the answer to that question.

(Record read by the Reporter.)

Q. (By Mr. Witt). What did the men decide to do?

A. The men decided not to accept because the management of the company wanted to know whether they would accept or not, and we had told the management of the company that if the men did not accept, they would walk out.

Q. At this last meeting, did the men decide to walk out?

A. They decided to walk out.

Q. This was when?

A. On the 21st.

Q. What month?

A. Of May.

Q. Do you remember until when the men were out?

A. They were out until June 3rd, to be exact.

Testimony of Tony J. Moraco

Q. June 3rd; do you remember what day of the week that was?

A. On a Monday.

Q. On a Monday?

A. They went back to work on that Monday.

Q. Did you, as a member of the committee, negotiate a settlement of that first strike with the management?

263 A. I did.

Q. Who was present at that meeting besides the members of that committee?

A. There was Mr. Garry Sands, Mr. Herbie Sands, and Mr. Joe Sands.

Q. Any other officials of the M.E.S.A.?

A. And Harry Potter.

Q. Any officials of the Federal Government?

A. No.

Q. Do you remember at this conference a discussion with respect to seven men that the company did not want to take back?

A. What meeting are you talking about?

Q. This meeting just before you went back after the first strike. You say you went back on Monday, June 3rd. Just before that you had a meeting with the management; that is what you just said?

A. That's right.

Q. That is the meeting I am talking about. At that meeting?

A. We had Rogers there. I was just confused about the meeting.

Q. You were confused about the meeting. Who is Rogers?

A. Conciliator.

Q. Conciliator Rogers?

A. Yes.

Q. Do you recall at this meeting we are talking about whether the company wanted to keep some
264 of the men out?

A. They did discuss about several men.

Q. Do you remember any of their names?

A. I remember Jack Ratchford, Jack Norman. They discussed about Lou Meyers and Herman. I know him by his last name, Kenna—did I say Lou Meyers?

Q. You said Meyers. There may have been one or two others?

A. There may have been one or two others.

Testimony of Tony J. Moraco

Q. What did the company want to do about these men?

A. The company said they were incompetent?

Q. What? They were incompetent? Did the committee make an answer to that?

A. The committee said why were they incompetent.

Trial Examiner Danaceau: What did you say?

The Witness: Incompetable; is that the way you pronounce it?

Mr. Witt: He means incompetent.

Q. What was finally agreed upon with respect to these men?

A. It was agreed that these men were to come back to work and be given a final hearing by the shop committee and the management.

Q. You said you went back to work on Monday, June 3rd?

A. Yes, sir.

Q. On that day, did these men we are just talking about come back to work?

A. No; they did not.

265 Q. Did you see any of them on that Monday or shortly thereafter?

A. Possibly at lunch time.

Q. On or about what day was this? Was it on this Monday or was it the next day or on Wednesday?

A. Possibly it was Tuesday the 4th.

Q. Did you have a conversation with them?

A. About three or four of them talked to me.

Q. What did they say?

A. Why these three men said they weren't hired, they weren't given any cards and everybody else had.

Q. What did you tell them to do?

A. I told these men they were to go and see the management and protest.

Q. Did you see them again later?

A. This was on the 4th. I am not sure whether it was on the 4th.

Trial Examiner Danaceau: The question is did you see them again later after that?

Q. (By Mr. Witt). Did you see them again after they had seen the management?

A. Yes, that night.

Q. What did they tell you then?

A. No—they had seen the management, but I didn't see them that night but at noon. They said they

Testimony of Tony J. Moraco

266 had seen the management and they said Potter knew all about it.

Q. What did you tell them to do?

A. I told them to see Potter.

Q. Did they come back to you?

A. I didn't see them then. They came back at four o'clock, Charlie Rudd was present.

Q. What did they tell you?

A. They told me they had seen Potter and there was no decision handed to them.

Q. Well, what did you decide to do when they came back from Potter?

A. I decided to call Potter again.

Q. Did you call Potter?

A. I didn't call Potter. I told Charlie and Charlie said he would handle it.

Q. Did you at any time after that have a conference with the management, did you and the rest of the committee?

A. That's right. I forget now; it was at noontime that these men had told me this.

Q. And what happened then?

A. I was instructed; I got word from these men that the committee should see the management; so I talked with Mr. Garry Sands; it was during the lunch period.

Q. This was on what date, exactly, do you remember? Was it on Tuesday of that week?

267 A. It was on Tuesday, and I asked Garry if he could make an appointment for a meeting.

Q. Meeting with yourself or with the committee?

A. With the committee. He said he had to go out to lunch and possibly have a meeting at two o'clock. so we had that meeting and they told us the same thing that they had told the men, that Potter knew all about it and couldn't do anything about it.

Q. Who told you this?

A. Mr. Garry Sands.

Q. Mr. Garry Sands. What did the committee say to Mr. Garry Sands at this conference?

A. The committee said Mr. Sands must have misunderstood Harry Potter.

Q. Did you tell him what the committee's understanding was?

A. Yes.

Q. What was that?

Testimony of Tony J. Moraco

A. The committee's understanding was that all men were to return to work and be given a final hearing by the committee and the management of the shop.

Q. Did you see Mr. Rudd after this conference with the management?

A. That night.

Q. That night you saw Mr. Rudd?

A. Yes.

Q. Did you see him alone or with the other members of the committee with you?

A. They were all out there.

Q. They were all out there. Did you speak to Mr. Rudd?

A. Yes, sir.

Q. What did you tell Mr. Rudd?

A. Why, I told him exactly what happened at the meeting.

Q. What happened at the meeting with the management?

A. With the management.

Q. Did you tell him anything else?

A. I told him that they say that Potter knew all about it.

Q. Did you see Mr. Rudd the following morning?

A. I did.

Q. What did Mr. Rudd tell you then?

A. What did Mr. Rudd tell me then?

Q. Yes, on the following morning.

A. As I understand it, we all agreed, the committee agreed that we should ask the men about this situation in the morning when they came to work and see what they thought about it, and we did.

Q. That was the following morning?

A. The following morning.

Q. After you had seen Mr. Rudd, did you discuss the situation with the men when they came to work that morning?

A. With most of them.

Q. With most of them. How many were there?

A. Sixty.

Q. Were they all employees of the Sands Manufacturing Company?

A. All employees of the Sands Company but not all members of the M.E.S.A.

Q. Did you or did the committee make any recommendations to the men, what they should do?

Testimony of Tony J. Moraco

A. We left that up to the men.

Q. What did the men decide to do?

A. The men decided to stay out until the seven men were returned to work.

Q. Did they picket thereafter?

A. Yes, sir.

Mr. Witt: That is all.

CROSS EXAMINATION

Q. (By Mr. Stanley). Mr. Moraco, when we come down to the first strike, did Mr. Potter have a meeting with the management that you heard of at a time when the committee was not there?

A. (No answer).

Trial Examiner Danaceau: Do you understand the question?

The Witness: No; I don't.

Q. (By Mr. Stanley). Well, I will make it plain then. You met with the management?

A. Yes, the committee.

Q. Your committee met with the management before the first strike?

270 A. That's right.

Q. The committee and Potter met the management at least at one meeting; didn't they?

A. That's right.

Q. How many meetings did you have when you were with the management?

A. Well, we had that one meeting when we made the demand.

Q. Any after that?

A. And then we had a meeting with Conciliator Rogers.

Q. That's right. Those are two. Was Potter there on both of those occasions?

A. When we met with the management?

Q. Yes.

A. I am not so sure about that.

Q. Well, now, where did this idea of a two cent raise come up the first time? Did that come up in the committee meeting with the management? Where did you hear about it first; at that meeting or after that?

A. That two cent raise, I think, came up when the Conciliator Rogers was called.

Q. As a matter of fact, it was not mentioned at the first meeting with the committee and the management

Testimony of Tony J. Moraco

The management said they were paying all they could afford?

A. That's right.

Q. Calling your attention to the fact that
271 they had recently given a ten percent raise to some of the men?

A. Yes.

Q. They said that was all they could afford to do; isn't that right?

A. Yes, sir.

Q. And then the meeting broke up; isn't that correct?

A. Well, we said that we would go back and tell the men.

Q. That's right. And then that meeting broke up. Now don't you recall that Mr. Potter reported to you about this two cent matter, this two cent raise?

A. (No answer).

Q. If you don't remember, all right.

A. Mr. Potter didn't recall it to me because that was discussed when I was present when Conciliator Rogers was there.

Q. The first you heard about it was when the Conciliator was at your meeting?

A. That's right.

Q. That's right. Well, now, that was on what day of the week?

A. That is the first strike you are talking about?

Q. I mean this meeting with the Conciliator.

A. It must have been between the 21st—

Q. What day of the week? I am not asking you—

Mr. Stanley: Let me ask right across the table, was it Saturday, Mr. Witt?

272 Mr. Witt: That meeting with the Conciliator Rogers was.

Q. (By Mr. Stanley). Now, at that meeting, had that meeting broken up then with the idea that you would submit that to the men, the two cents?

A. That's right.

Q. Yes, and you had a meeting on Monday morning with the men; is that right?

A. No, not Monday morning, but we did have a meeting; that's right, but not Monday morning.

Q. About noon in the lunchroom?

A. No; not in the lunchroom. I don't know what you are talking about. You have got me confused there.

Testimony of Tony J. Moraco

Trial Examiner Danaceau: After you had this meeting with Rogers, the Conciliator, you did take what was offered to the men. When was the next meeting that you had with the men? Do you understand that?

A. I do. Now, I understand that. We discussed that on Saturday with Rogers and we come back to the men.

Q. On that same night?

A. On that Saturday, that same day we had the meeting in the factory next to—well, it is an empty factory next to the Sands Manufacturing Company there.

Q. (By Mr. Stanley). So it was Saturday you had it?

A. Yes.

Q. When did you go on strike?

273 **A.** Go on strike?

Q. Yes.

A. We went back to work on a Monday.

Q. I am still asking you when you went on strike. You went to work on Monday. Did you have any other meeting before you went out on strike; that is what I am trying to get at.

Trial Examiner Danaceau: Perhaps I can help it along by suggesting that you ask him whether the men accepted the offer.

Q. (By Mr. Stanley). Yes, on the morning, on Saturday, did the men accept the two cent raise?

A. Naturally they accepted it because we went back to work on Monday.

Q. So far no strike. Then you went back to work on Monday. Well, when was this strike?

A. Are you talking prior to the strike or after you had the first strike?

Q. All this time I am talking about the first strike.

A. The first strike?

Q. Yes.

A. I thought you were talking about after the first strike.

Q. I thought I made myself clear.

Mr. Witt: Mr. Stanley, you have your dates confused. You were talking about the second strike. Now, we want to help you, Mr. Stanley.

Mr. Stanley: That is very kind of you. I
274 thought I made it perfectly clear.

Q. (By Mr. Stanley). So let's you and I get

Testimony of Tony J. Moraco

together, Mr. Witness. I am talking about the first strike.

Mr. Witt: That was the first strike on May 21st.

Mr. Stanley: Let us forget all this talk across the table.

Q. (By Mr. Stanley). Let us get back to the first strike. You came to the company with a demand for five cents increase and the company said, "No; we can't give any," and you went back to the men and the men still said, "We must have some increase," and then at that time what time was the two cents increase talked about?

A. I told you the two cents increase was talked about when Rogers, the Conciliator, was there.

Q. And never before that?

A. It was not mentioned.

Q. Well, let us go right on with it. They still demanded an increase of five cents per hour and they met and went on strike; is that right?

Trial Examiner Danaceau: There is nothing in the witness's testimony—

The Witness: If I get that right—

Trial Examiner Danaceau: Just a moment. Now, if I am wrong, correct me. They were out on strike at the time?

275 Mr. Stanley: No.

Mr. Witt: Yes.

Trial Examiner Danaceau: On May 21st.

Mr. Stanley: I am talking about before May 21st.

Mr. Witt: Your mistake is that you are assuming that Conciliator Rogers was there.

Mr. Stanley: I understand.

Trial Examiner Danaceau: This two cent increase that was talked about when the Conciliator was there was after the first strike.

Mr. Witt: In settlement of the first strike.

Mr. Stanley: No; I don't think that is right.

The Witness: Now I got it right.

Trial Examiner Danaceau: Let us have the witness explain.

Mr. Witt: Let us have the witness testify.

Mr. Stanley: Possibly the witness knows more about it than we do.

The Witness: The two cents was discussed before Conciliator Rogers came there.

Mr. Stanley: That's right.

Testimony of Tony J. Moraco

Q. (By Mr. Stanley). At what time was it discussed?

A. I think it was discussed on—I get them dates mixed up—it was discussed before we went out on strike; I know.

Q. That's right. And wasn't that brought back to you, that offer of two cents increase brought back to you by Mr. Potter and you discussed it in your
276 committee meeting with Mr. Potter?

A. We did.

Q. Yes. And that was before the first strike; wasn't it?

A. Yes, sir.

Q. That is correct; isn't it?

A. Naturally, it would have to be before the first strike.

Q. And your men wanted more than two cents?

A. That's right.

Q. That's right. And the first strike occurred in the middle of the day; didn't it?

A. That's right.

Q. And the answer to the company came at noon-time; didn't it?

A. That's right.

Q. Sure, we are right. It was at luncheon that Mr. Potter came back to the management and said that the committee said that it will not accept the two cents increase; isn't that right?

A. Not the committee; the men would not accept.

Q. All right. The employees would not accept, and they went out on strike immediately after lunch; didn't they?

A. Exactly.

Q. All right. Then you are out on strike and the Conciliator gets into the picture and you have a meeting with the Conciliator; isn't that right?

A. Yes, sir.

Q. Now, let us see if we are clear about one
277 thing. Up to the time of the calling of the first strike, had there been talk about some five, six or seven incompetent men?

A. Of the first strike?

Q. Yes. When was that subject brought up first?

A. I am not so sure about that, whether this was called when the Conciliator was in there or whether it was called previously.

Q. Or before. When it was brought up, what was it

Testimony of Tony J. Moraco

that the management said about these particular incompetent man or men they claimed to be incompetent?

A. If I told you their exact words, they said that some of the men were not worth forty cents an hour that were working there.

Q. And they mentioned these men?

A. Yes, sir.

Q. Did you know the men?

A. Well, I can't name them all.

Q. I don't mean by name, but had you ever seen them work?

A. Yes, sir.

Q. Had they worked in your department?

A. One of them did work in my department; maybe two of them did for a while.

Q. Isn't it a fact that your committee agreed that some of those men were not competent workmen?

A. We agreed that some that weren't competent workmen, but they had to prove they weren't.

Q. When you say you thought they were incompetent workmen, what was the use of having a hearing?

A. We didn't say we thought. We thought probably they had so many that were incompetent—

Q. Based upon what did you believe that?

A. That was brought up.

Q. It was just the management. You didn't hear anything about it yourself?

A. We didn't bring it up.

Q. Did you make any inquiry about the men being incompetent?

A. So far as I know, the man worked for me was all right.

Q. That was one man?

A. Yes, sir. He didn't work for me but worked in the department.

Q. When you say he worked for you, you weren't a foreman?

A. No.

Q. What department did you work in?

A. In the shipping department.

Q. You knew who these men were, knew their names at the time?

A. The men that was discussed about?

Q. Yes.

A. I did.

Testimony of Tony J. Moraco

Q. Did you go back and tell them that there was some talk about their being incompetent?

A. Yes; I thought it was discussed. That phrase was brought about, that some of the men were
279 not worth forty cents an hour.

Q. Did they mention them by name?

A. We didn't mention the men by names.

Q. You didn't tell the men privately about it; did you?

A. No; we didn't.

Q. Now we come up to the time of the Conciliator; had there been meetings during the strike and up to the meeting with the Conciliator?

A. No; the management hadn't called us back to a meeting of any kind.

Q. The management didn't attempt to run?

A. No; they didn't attempt to see the committee.

Q. They didn't attempt to run the shop and you just picketed; isn't that so?

A. No; we picketed until the Conciliator was called.

Q. Mr. Potter said he got the Conciliator and got together. Now you are with the Conciliator. Did you talk with the Conciliator about these men that were incompetent?

A. They discussed it.

Q. You finally came to an agreement; didn't you?

A. We did.

Q. Who was to write up that agreement?

A. The committee, provided the assembly agreed to it.

Q. And you did submit it to the assembly?

A. We did.

Q. And then you were to draw up that agree-
280 ment?

A. Yes, sir.

Q. And did you draw it up?

A. We did; not I.

Q. I beg your pardon?

A. I said we did; Not I.

Q. Did you submit it to the management?

A. You talking about the 15th now or—

Q. I don't know how—

A. You are talking about the 15th; aren't you when the Conciliator was there?

Q. I am not talking about the 15th at all. You had agreed with the Conciliator that the committee was to

Testimony of Tony J. Moraco

draw up a contract and you are about to go back after the first strike; that is the time I am talking about and it is not the 15th; is it? That is about the 2nd of June?

A. That's right.

Q. All right. Now, did you draw up that agreement then?

A. You got me confused on the dates there. We didn't draw up an agreement.

Q. You were to draw up one; weren't you?

A. Yes, sir.

Q. But you didn't draw it up?

A. No; we didn't.

Q. You went back to work?

A. Yes, sir.

281 Q. You never did bring up an agreement up to the management at that time?

A. It was supposed to be brought to them.

Q. But your committee didn't get together with Potter and draw it up; isn't that right?

A. We knew exactly what the demands were.

Q. But it was to be put in writing; wasn't it?

A. Well, I had an understanding to that effect.

Q. And the management was waiting for you to bring in your agreement; wasn't it?

A. Not exactly.

Q. Well, they weren't to draw it up, were they?

A. No.

Q. You were to draw it up?

A. Yes. They agreed we were to go back to work during the period of four or five days that agreement was to come into their hands and sign it.

Q. You were to get it up in writing and bring it into the management; is that right?

A. That's right.

Q. You were to go back to work on Monday morning. When was it, Monday or Tuesday, that these men came to you and complained that they hadn't been called back to work?

A. I think it was on a Tuesday.

Q. Tuesday?

282 A. On a Tuesday.

Q. When you went back to work on Monday morning, had you received any postal cards from the management to come back to work?

A. No; some of the men had, some of the other men got postal cards.

Testimony of Tony J. Moraco

Q. You didn't get any?

A. No.

Q. You just told the employees that the strike was settled and to come back to work; wasn't that it?

A. We told them that they weren't all to come back to work the next day.

Q. You did?

A. Yes.

Q. Why?

A. Because the management said they had to stock up and get a lot of material in order to run the factory, and when they got that material they would be able to hire the rest of the men.

Q. So you told certain departments to come back to work?

A. Well, first of all, it was decided that certain departments were to come back to work.

Q. Did everybody come back that Monday morning?

A. Because the superintendent of the factory changed his mind about it.

Q. Did everybody come back that Monday morning; certain people to come in and certain people
283 not to come in?

A. Not until Tuesday.

Q. They all came?

A. Yes.

Q. Monday, you heard nothing from these five or seven men; did you? It wasn't until Tuesday?

A. Naturally you wouldn't hear until Tuesday because they didn't receive any cards.

Q. Naturally you didn't hear?

A. No.

Trial Examiner Danaceau: Let us not have arguments between counsel and the witness. He answered the third or fourth time that he didn't.

Mr. Stanley: He didn't hear until Tuesday.

Trial Examiner Danaceau: Didn't hear until Tuesday.

Q. Now, when they came to you, you said, "Go and see the management;" is that correct?

A. I said to go see the management; that's right.

Q. And they came back and said to you, "We have seen the management and the management said Mr. Potter knows about it." "Go see Potter?"

A. That is what the management told the men and the men told me.

Testimony of Tony J. Moraco

Q. Did you call up Potter?

A. No; I didn't.

284 Q. Did the committee call up Potter?

A. No; the committee didn't call up Potter.

Q. And the men reported back to you that they had seen Potter, but they couldn't get any answer from Potter; is that right?

A. Yes; after working hours it was.

Q. They had seen Potter, but he wouldn't give an answer?

A. That's right, although he had told the committee to act upon it. That was at lunch time.

Q. Didn't it occur to you at that time that the thing to do was to, if there was a mistake between Potter and the management. for you and Potter and the management to sit down and iron that out before you had a strike?

Mr. Witt: I object to that. He is arguing with the witness.

Mr. Stanley: I am not arguing. I am asking him what occurred.

Trial Examiner Danaceau: You were asking him something that was speculative. The witness can say what he did, but what might have occurred at the time or what might be entertained at the time in his mind is not pertinent.

Mr. Stanley: Very well.

Q. (By Mr. Stanley). At the time, you didn't suggest to these men and you didn't go to the management and suggest a meeting between the management and Potter and your committee; did you?

A. I told you before that we had a meeting at lunch time—I mean I asked Garry for a meeting at noontime and he told me he would be back at two, so made an appointment with him for two o'clock because Potter had told these men to tell the committee to act, to see the management.

Q. I still come back—

Trial Examiner Danaceau: Did you have a meeting at two o'clock?

The Witness: Yes; we did have a meeting at two o'clock.

Q. (By Mr. Stanley). You testified that you did go to the management and the management said Mr. Potter knows all about this arrangement?

Testimony of Tony J. Moraco

A. That's right.

Q. That is the effect of what you said?

A. Yes.

Q. But you didn't then get Potter and the management together that is what I am getting at?

A. We didn't get Potter and the management together, but we called Potter and told him to that effect.

Q. What did he say?

A. I don't know because I didn't call.

Trial Examiner Danaceau: You mean you personally?

The Witness: I didn't personally call. I had Charlie Rudd call because he said he would handle it.

286 Q. (By Mr. Stanley). I see. You don't know what the result of that was?

A. (No answer).

Q. You don't know?

Mr. Witt: Just a minute. You asked him a question and you didn't wait for an answer. Will the Reporter read that?

(Record read by the Reporter.)

Trial Examiner Danaceau: I take it you withdraw the question. You did ask a question and was going to ask another question.

Mr. Witt: We wanted it shown on the record.

Mr. Stanley: That could be withdrawn. If he didn't telephone, he wouldn't know what the result was.

Trial Examiner Danaceau: I take it when you ask a question and don't give the witness an opportunity to answer the question and then ask another question that it automatically withdraws the former question.

Q. (By Mr. Stanley). You didn't talk personally to Mr. Potter, so you don't know what he said?

A. I didn't talk to Potter. We had instructions to act because we were the committee.

Q. In other words, Mr. Potter instructed you—when I say "you," I mean you as a committeeman—to take action in regard to this failure to re-employ these men; is that correct?

A. That's right.

287 Q. And did you take action?

A. We went in there at two o'clock, as I repeated before.

Q. He had told you before this meeting at two o'clock to take action; that is correct, isn't it?

A. Absolutely.

Q. Then you saw the management?

Testimony of Tony J. Moraco

A. At two o'clock.

Q. The management said Mr. Potter knows all about this arrangement; the men are not to be taken back; isn't that in effect what the management told you?

A. That is what the management told us; yes, sir.

Q. Then you had Mr. Rudd call Mr. Potter; is that right?

A. Yes, after working hours.

Q. What the result of that was, you don't know; is that right?

A. Well—

Trial Examiner Danaceau: You mean what the conversation was?

Q. (By Mr. Stanley). What the conversation was?

A. What the conversation was, I was told the next morning.

Q. Very well. The next morning, what did Mr. Rudd say, or did you talk to Mr. Rudd?

A. Mr. Potter said that he was right—they told him he was right about—that these men should not be discharged until a final hearing, and he had given
238 the committee instructions to act and so the committee had instructions to act by the following morning.

Q. By instructions to act, you mean instructed—

A. Provided the men agreed to it.

Q. You had Potter's approval so far as he was concerned of calling a strike?

A. He gave us instructions to act.

Q. That doesn't mean calling a strike; does it?

Mr. Witt: I object.

Trial Examiner Danaceau: That goes to argument.

Q. You were to meet the men as they came to work?

A. They were all assembled.

Q. As they came to work, you stopped them there?

A. No; I didn't stop them. They were assembled there.

Q. They came out at the usual working hour?

A. Yes, usually came—yes, some came five minutes before or after.

Q. Who talked to them?

A. Naturally the men assembled and the committee.

Q. You did discuss it?

A. Yes.

Q. You told them what the controversy was?

A. Yes.

Testimony of Tony J. Moraco

Q. What did you recommend to them?

289 A. We told them what it was and we asked the men whether they would want to see them seven men out or want them seven men back, and all the men said they wouldn't go back until the seven men were returned to work.

Q. Was there a vote?

A. No; there was no vote.

Q. You went out on strike at that time, of course, you did?

A. It took effect, yes.

Q. You still continued on strike; that is right, isn't it, until—

A. Possibly the 15th.

Q. June 15th or thereabouts?

A. Mr. Witt: The 17th.

A. Well, the 17th is when we went to work.

Q. You got together an agreement on the 15th?

Trial Examiner Danaceau: The agreement is dated the 15th; your answer is yes to that?

The Witness: What was that question?

Trial Examiner Danaceau: You mean you went on strike until June 15th?

The Witness: Yes.

Q. (By Mr. Stanley). Now, the Conciliator came into the meeting just before you went back at the end of the second strike; didn't he?

A. That's right.

Q. That's right. Now at that time—

290 A. Oh, wait a while. You have got me confused there. Which strike you talking about now?

Trial Examiner Danaceau: How many times was the Conciliator there, do you know?

The Witness: The Conciliator was there just once.

Trial Examiner Danaceau: Just once?

The Witness: That's right.

Q. (By Mr. Stanley). Well, then, we will clear that up right now. The Conciliator was there just before the close, just before the first strike; is that right?

Trial Examiner Danaceau: In response to my own question, he said he was there just once.

Q. (By Mr. Stanley). And just before the first strike?

Trial Examiner Danaceau: Is that correct?

Q. (By Mr. Stanley). Just before the second strike; is that right?

Testimony of Tony J. Moraco

A. Yes.

Q. All right. Now we come down to drawing the next agreement that was still left with your committee; wasn't it?

A. That's right.

Q. Now you drew this agreement of June 15th; didn't you?

A. I didn't draw it.

Q. Who did draw it?

A. The committee drew it.

Q. Who physically dictated it?

291 A. We all dictated it.

Q. Mr. Potter—all right. You first had a draft which you submitted, in which the management found one or two clauses which they didn't like and those were changed; isn't that right?

A. That's right.

Q. You finally eliminated or changed those from your draft and that became the contract of June 15th; that's right, isn't it?

Trial Examiner Danaceau: Answer because the Reporter doesn't get the nod.

A. Yes, sir.

Q. Then you went back to work.

A. On the 17th.

Q. On the 17th. Now at that time or about that time, some new men were employed; weren't they?

A. Yes, sir.

Q. And in negotiating this contract, you apparently knew that new men were coming back because there was something to be done about those new men within the first fifteen days; wasn't there?

A. Yes; I knew about that.

Q. You knew about that. You had some discussion about that; didn't you?

A. Yes, sir.

Q. You also had some discussion about possible layoffs; didn't you?

292 A. Correct.

Q. You have been there for several years and you know there are layoffs and always have been layoffs during the slack seasons; isn't that right?

A. Just layoffs of extra men.

Q. Yes. And there have been times when you worked only part time?

A. That's right.

Q. So you discussed that in drawing up this contract; didn't you?

A. In drawing up that contract?

Q. Yes, before the contract was drawn up?

A. Yes, we discussed about it.

Q. Then they hired some new men; didn't they?

Trial Examiner Danaceau: He has already answered that.

A. Yes.

Q. I am coming to the point of your next talk with the company after this was signed. When you talked to them next, you talked to them about these new men; didn't you?

A. We did talk about the new men.

Q. After the contract?

A. Before they had hired them.

Q. That's right. Was that before or after the signing of the contract?

A. That was before they signed the contract.

293 Q. Now I am coming to the time after they signed the contract. When did you meet with the company after the signing of the contract?

A. I says before they signed the contract we discussed about these men being hired.

Q. I understand that. I am way beyond that.

Trial Examiner Danaceau: May I suggest asking him whether there was such a meeting.

Q. (By Mr. Stanley). Was there a meeting after the contract was signed, and if so, how long after the contract was signed?

A. There might have been one or two.

Trial Examiner Danaceau: Did you attend any committee meeting with the management after that contract was signed?

The Witness: Oh, I think I did.

Q. (By Mr. Stanley). But you had several meetings with the management in the summer?

A. You mean after the contract was signed?

Q. Yes.

A. Possibly.

Q. What was the first meeting after the contract was signed; when was it and how did it happen?

A. How could I remember that day?

Trial Examiner Danaceau: Oh, approximately.

Q. (By Mr. Stanley). Approximately. Was it one day or a week or a month?

294 A. It might have been one week; it might have been three weeks.

Q. Well, what was the meeting about, anyway?

Trial Examiner Danaceau: What did you talk about at that meeting?

The Witness: I think we discussed about if I can remember, we discussed about one department, about the tank heater department.

Q. (By Mr. Stanley). What about that?

A. The management wanted to lay off the tank heater department.

Q. The company did?

A. Yes.

Q. The company did, and what was agreed to then?

A. Well, they wanted to lay off all of the men in the tank heater department, and the contract we had signed there didn't allow it.

Trial Examiner Danaceau: Did you come to any agreement with the management at that meeting; did you come to any agreement with them as to what was to be done?

The Witness: Yes, partly.

Trial Examiner Danaceau: The question is what was that agreement?

The Witness: Well, they finally decided that it would be brought up to the men of that department.

295 Q. (By Mr. Stanley). Whether the tank heater department would shut down or not; is that right?

A. That's right.

Q. And put to a vote of the men; is that right?

A. Talked to the men. We had the management talk to the men.

Q. And see if the men agreed to shut down the department; is that right?

A. Just temporary shutdown.

Q. The management said they didn't have any more work at that time; is that right?

A. They said for that department.

Q. They said for that department?

A. Because they didn't have any stock.

Q. Didn't have any stock coming from other departments to the tank heater department so, therefore, they wanted to shut down the tank heater department; is that it?

A. The stock was not coming from other depart-

ments; it was not exactly that. They wanted to shut down for that purpose because they didn't have burners, didn't arrive at the factory from some other foundry.

Q. In other words, they had used some of the stock that goes into the tank and they didn't want to go ahead with the tank heater department until they got those parts?

A. First they said they wanted to shut the tank heater department off and then they let them work.

Q. At any rate, they first asked you if they
296 could shut down the department and then you left it up to the men of the tank heater department; isn't that right?

A. (No answer).

Q. You have to answer yes. Don't nod your head.

A. Yes.

Q. And then did the men in the tank heater department decide what they wanted to do about shutting down that department for the time being?

A. Well, they were all called into the lunchroom.

Q. By whom?

A. They were all called into the lunchroom to have the management talk to them.

Q. Did the management talk to them?

A. They did.

Q. What was decided?

A. The management decided that possibly there would be more work in that department than there would be in other departments if they took three days, if it shut down for a week and then come back the following week and the men agreed to it.

Q. The men agreed to it. Let us see if we have gotten that clear. The men and the management agreed for a three day week that week and then come back full time the next week or shut down entirely for that week?

A. Shut down that week and come the following week.

297 Q. And was that done?

A. It certainly was.

Q. Now we come to a meeting some time when everybody is laid off except the men whose numbers are thirty or under, you remember that occurrence?

A. I remember that, yes.

Q. What did the management say at that time? Did it say it didn't have enough work?

A. They said that it was a slack period, they said, and they would have to lay off new men and they referred this, that they wanted to lay off—they didn't lay off all the tank heater department at the time.

Q. We are way beyond the tank heater department. This is numbers; every man has a shop number, a working number; hasn't he?

A. That's right.

Q. What was your number, for example?

A. Number Nine.

Q. Nine, and they were all numbered in the order in which they had been employed; isn't that right?

A. That's right.

Q. For instance, the first thirty numbers were these old thirty men who worked before the Government order?

A. Yes, sir.

Q. When an order was issued, laying off everybody except those members whose numbers were
298 thirty or above that; isn't that right?

A. Yes, sir.

Q. Then you had a meeting about that; didn't you?

A. Yes, sir.

Q. What did the management tell you at that meeting?

A. Well, the management said, after these men had come back to work in that tank heater department, the management said they would have to lay off the men in the tank heater department completely.

Q. Lay them off completely?

A. Yes.

Q. What was done about that?

A. There was a discussion there about having newer men working in other departments; these were older men according to seniority rights.

Q. That's right.

Mr. Stanley: May I suggest a five minute recess?

Trial Examiner Danaceau: Yes; we will have a short recess of five minutes.

(Recess had.)

Mr. Stanley: Will you read the last question and answer?

(Last question and answer read by Reporter.)

Trial Examiner Danaceau: Instead of "these" I thought it was "there were older men" instead
299 of "these."

Testimony of Tony J. Moraco

Q. (By Mr. Stanley). See if we understand what you mean by that. They wanted to reduce the working force in one department; is that right, or in several departments?

A. Well, it was understood that they should lay off all the newer men first.

Q. No, no. Please answer my question. When you and your committee and the management got together at this time, the management said that they wanted to lay off some men, new men in one department or men in several departments?

A. At that time, they wanted to lay off the tank heater department.

Q. I see. And they had already laid them off for one week, and then they wanted to lay them off again; is that it?

A. After they had come back to work.

Q. And they wanted to lay off the entire crew in the tank heater department?

A. They wanted to lay off the men in the tank heater department.

Q. All of them?

A. Yes, all of them.

Q. All of them? And some of the men in the tank heater department were older employees than the newer employees; is that right?

A. That's right.

Q. Some of those were from the original
300 thirty?

A. There were only two of the original thirty in that department.

Q. And the committee said that if they shut down the tank heater department, those two men should be employed in other departments; is that right?

A. That is the understanding we had.

Q. Well, is that what your committee said should be done?

A. The committee said that they had newer men in other departments that should be laid off before these men in this department because they were hired before that.

Q. What did your committee say should be done with these older men in the tank heater department?

A. These older men?

Q. Yes.

Testimony of Tony J. Moraco

A. Said they should be retained.

Q. How could they be retained if they were going to shut down the tank heater department? What did your committee suggest?

A. To lay off some of the newer men in the other department.

Q. And put the men in the tank heater department in another department; is that right?

A. That's right.

Q. And some of the newer men that you were talking about that should be laid off were in the machine shop; weren't they?

A. That's right.

Q. What you were asking them was that the men, the old men in the tank heater department should be shifted to the machine department, to the machine shop?

A. Not only to the machine shop, but to other departments too.

Q. To other departments, but the machine shop was mentioned; wasn't it?

A. Yes, sir.

Q. Now, at that time the management said that it wanted to build up more employees in the machine department; didn't they?

A. What do you mean by that?

Q. Well, maybe—

Trial Examiner Danaceau: Frame it more simply.

Q. (By Mr. Stanley). I will make it simple language then. The management said that it wanted to put more men in the machine department at that time; didn't it?

A. No; it didn't say that they wanted to put more men in the machine department.

Q. Well, it had been hiring men for the machine department; hadn't they, after the strike?

A. Well, yes.

Q. The management had said that they needed more men in the machine department after the strike; didn't they?

A. In the machine department?

Q. Yes.

A. Yes.

Q. Yes; and a great many of the new men hired after the strike were working in the machine department; isn't that right?

A. Yes, sir.

Q. Now, did the management say to them, to your committee, that it didn't want to take men who weren't trained in the machine department and put them in the machine department?

A. The management did say that.

Q. That is really the contention?

A. That is what the management said.

Q. Yes. That continued to be the contention for several meetings; didn't it?

A. Well, they probably discussed it at other meetings.

Q. Now there came a time when the management not only said that they didn't have work in the tank heater department, but they didn't have work in all the departments except the machine shop; isn't that right?

A. Well, they did say that, yes, but at another meeting.

Q. At another meeting, and at that meeting, following that meeting, there was some sort of an order laying off everybody for the time being whose numbers were in excess of thirty, keeping the men whose numbers were thirty or lower; isn't that right?

A. That's right.

Q. That was at a time when the management wanted to make a general reduction of the working force at the slack season; wasn't it?

303 A. Yes.

Q. And your committee suggested, didn't it, that the management discharge, not discharge, but lay off everybody having numbers higher than thirty; isn't that correct?

A. Well, at the time, Yes.

Q. That was correct and that order was put into effect; wasn't it, by a notice; is that right?

A. Yes, yes, sir; there was a notice on the clock.

Q. So that left in the shop only those men who had worked before the Government order; that is correct, isn't it?

A. Just the original men.

Q. Now that continued how long?

A. Not very long.

Q. A week or two?

A. Not even that.

Q. Not even a week; is that right?

A. They finally decided that the tank heater department would be laid off and most of the other departments would be laid off.

Q. Then you come to another order?

A. They said it was a gamble. One department had work and the other departments didn't have it, and the men would gamble in their department whether they worked in the department where there was work or was not any work.

Q. You mean by that this, don't you, that the men were classified by departments and if there was
304 no work in a department, the men would just have to gamble that there wouldn't be work in that department and they would be out of work until that department started up again; is that what you mean?

A. That is what they, the tank heater department, decided then.

Q. The tank heater department decided then—

A. Well, the men decided to take it.

Q. Did your committee agree to that or was it just the men in the tank heater department?

A. We agreed that was the only way out, that the tank heater department would be laid off permanently and some of the other men in the other departments.

Q. Agreed to the same thing; is that right?

A. Yes.

Trial Examiner Danaceau: I may be wrong, but I take it that when he said gamble that he means that the men in the respective departments were to take their chances.

Mr. Stanley: That is the way I understand it.

Trial Examiner Danaceau: No matter how long the men were laid off they were taking that chance.

Q. (By Mr. Stanley). That is what you meant?

A. Yes.

Q. That continued how long?

A. There was a lot of discussion about this.

Q. It wasn't finally settled then?

305 A. No; it was not finally settled.

Q. Well, I think possibly we are talking about two different things. The tank heater matter, I understood you to say was settled in this way, that the men were first laid off for a week and then came back?

A. That was settled, and then they were laid off permanently.

Q. And after that they were laid off permanently; you don't mean that?

A. They were laid off until further notice.

Q. Until further notice. We are coming to a time on or about a general reduction in force not only in the tank heater department?

A. No; there was another discussion.

Q. There was another discussion about all departments, wasn't there, about a reduction in the force; wasn't there?

A. Yes, sir.

Q. And at that time the committee insisted, I take it from what you say, that that must be so—the committee insisted that if there was a reduction in a department by which some of the old men had to quit work that they should go into another department in place of the newer men; is that right?

A. That's right.

Q. Yes. Well, now, let us forget the tank heater department and go on with this general reduction negotiation. The management said if we have
306 reduced one department by discharging some of the new men and there are some old men out in other departments, we, the management, want some of these new men who have been discharged to come back to work in that department we are building up; you understand my question?

A. I understand.

Q. Is that correct?

A. That is what the management wanted.

Q. That is what the management wanted and the committee said "No. If you have let out some of the new men, before you can take them back, if there are any old men out in the other departments, those old men must be brought back into this department in which they had not worked before" is that correct?

A. Yes, sir.

Q. There were long discussions over that; weren't there?

A. Quite a few.

Q. Yes. And they lasted for several weeks; didn't they?

A. Yes, sir.

Q. And they gradually got less and less work in the shop?

A. That's right.

Q. You were coming into the slack season?

A. It happened to be a slack season.

Q. It happened to be?

A. It happened to be a slack season because they had a lot of men do the work.

Q. I see. All right. They got down to a time
307 then when they were working only three days a week; weren't they?

A. Yes, sir.

Q. And the management said, "Now, we have got to build up this machine department in order to make up some stock"; didn't they?

A. Well, the machine department didn't work three days a week.

Q. Yes, I know. That is exactly what I mean. At the slack period the management said they needed to work the machine department more during the slack period in order to get stock ready so the other departments could take it up when they got back; that is what the management said?

A. That is what the management said.

Q. That is the way it is in this shop?

A. No.

Q. You don't know that it is necessary for the machine shop to start in first and build up stock in the machine shop first?

A. They naturally build up stock in the machine shop.

Q. That is the first thing that has to be done in the plant when they start up?

A. Yes.

Q. That is what the management wanted to do; isn't that so?

A. Yes, sir.

Q. And your committee said, "We don't want you to do that; we want you to start up all the departments."

308 A. When the management said when the layoff would come, they would lay off all the new men they told the committee.

Q. What I am asking you is this question. At this period in August, wasn't it the position of the management that they wanted to increase the numbers in the machine shop; you just said that?

A. I was only there until August 2nd.

Q. Didn't you work on the committee after August 2nd?

Testimony of Tony J. Moraco

A. No; I didn't.

Q. How?

A. No; I didn't.

Mr. Witt: Now this production payroll will show he was laid off on August 3rd, but his recollection is August 2nd.

Mr. Stanley: All right.

Q. (By Mr. Stanley). But before you were laid off, there was this talk about wanting to build up this machine shop?

A. Yes, sir.

Q. The management wanted to do that?

A. They wanted to keep the newer men in the machine shop.

Q. In the machine shop?

A. But they had other men in other departments that already had done machine work before and they wanted to be shifted around.

Q. These men doing work in all the other departments?

A. Yes, sir.

Q. The stock department and the shipping
309 department?

A. Yes, sir.

Q. And your suggestion was that those men ought to be brought back to the machine shop?

A. When the slack period came.

Q. And to let out the new men in the machine shop; is that right?

A. Yes, sir.

Q. Now, what you were referring to a moment ago about laying off all the new employees; that was in connection with a clause in the contract that said the company before it reduced to three days a week would have to lay off all the new men; that is what you meant by that, isn't that it?

A. That is the—

Q. You will find that in clause seven; was that right?

(Mr. Witt hands paper to witness.)

A. That clause seven that reads—that's right.

Q. That's right. That is what you meant by what the management had to do. They had to lay off all the new men before it could go to the three-day week; is that what you mean?

Testimony of Tony J. Moraco

A. But what you are referring to, clause seven—I have clause five; when employees are laid off, the seniority rule should rule.

Q. You haven't read it all.

A. The committee consented to that and the company added, "and by department."

310 Q. The committee added?

A. And the company added "by the departments."

Q. The committee didn't like that clause "and by departments."?

A. There was a lot of discussion about it.

Q. We are getting down to that; that is what your committee objected to, wasn't it?

A. Well, possibly.

Q. Well, it was; wasn't it?

A. It was kind of complicated.

Q. Were you in favor of that clause or against it? Let us put it to you bluntly.

A. Well, we were in favor of it.

Q. What? I didn't get that.

Trial Examiner Danaceau: "We were in favor of it."

Q. (By Mr. Stanley). The committee was in favor of it. Let us carry that into this situation. They wanted to build up the machine shop in numbers and you have just told us that what your committee wanted, insisted upon, was that the new employees in the machine shop should be laid off, and men, old men in other departments come to the machine shop; you have just told us that, haven't you?

A. Yes.

Q. That would be against that rule, wouldn't it? Let us be fair.

A. When employees are laid off, seniority
311 rights shall rule.

Q. Go ahead.

A. That is as far as I will go.

Q. That's it exactly. That's just it.

A. There are two meanings to that one clause.

Trial Examiner Danaceau: Let the witness explain.

Q. (By Mr. Stanley). Go ahead.

A. I say there are two meanings to that one clause.

Q. Yes.

A. Isn't there?

Q. Well, we would be interested in having your meaning.

Testimony of Tony J. Moraco

Trial Examiner Danaceau: Have you any interpretation of it? You want to give me your interpretation at this time, to explain your answer? You may do so.

Q. (By Mr. Stanley). What is your meaning of that clause?

A. When they are laid off, all the new men, they should lay them off according to seniority rights, that would be when they are hired; wouldn't it?

Q. In other words, that that should prevail throughout the shop rather than in departments; that is your interpretation, isn't it?

A. Exactly..

Q. Illustrated by this, if it is necessary to discharge some men in your department, let us say, that were old men, those men should have the right to go up in the machine shop in place of some newer employees there?

312

A. They always did.

Q. That is your interpretation of it; isn't that right?

A. Yes.

Q. You just nodded; is that right?

A. Yes; that's right.

Q. And that was the position of your committee; wasn't it?

A. That's right.

Q. That dispute was going on even before you left on August 2nd or 3rd; isn't that right?

A. Exactly.

Q. Now, you were in what department?

A. Shipping department.

Q. It would be your position then, if you were laid off in the shipping department on account of lack of work and you were an old man?

A. That's right.

Q. And there were some new employees in the machine shop, that you should be replacing a new employee in the machine shop?

A. That's right.

Q. That's right. The management said that would not work; didn't they?

A. The management said it was all right.

Q. They tried it out for a while; didn't they?

A. They certainly did.

313

Q. They tried that out?

Trial Examiner Danaceau: He said yes.

Q. (By Mr. Stanley). And then the management

Testimony of Tony J. Moraco

said it didn't work; didn't they?

A. Well, they discussed about it. They said—

Q. I know. It came back to the committee as far as they were concerned they thought that was not an efficient way to run the shop; didn't they?

A. That is what they thought, yes.

Q. They tried it out for a matter of several weeks; didn't they?

A. About that.

Q. And then they called the committee together again and they said they didn't want to do that any more; isn't that right?

A. Well, they said they didn't like it.

Q. The management claimed all the time that that was contrary to the contract anyhow; didn't they, in your talk with them, and you claimed that was in accordance with your contract; isn't that right?

A. Well, on one side it was and on the other side it was not.

Q. Well, just what do you mean by that? Let us put one question at a time. The management claimed it was not in accordance with the contract?

A. They said when employees were laid off, 314 seniority rights would rule. It would work all right so far. Then they added "by departments" and it didn't work then. It didn't work two ways.

Q. The management said "by departments"; that would be seniority in the department and that is what the management said. I am not asking you what your opinion is but what the management said?

A. That is what the management said.

Q. You didn't work at that shop after August 3rd?

A. No; I didn't.

Q. I beg your pardon?

A. No; I didn't.

Q. All right. Now, Mr. Sands calls my attention that I overlooked a matter which I don't think is quite as important as this. There was a time when they went through a three-day week; wasn't there? Was that before you left?

A. I left before that started, the three-day week.

Q. But you do know that all new, so-called new employees, were discharged before that three-day week went into effect; don't you?

A. I do, but not all the new employees—oh, yes, before the three-day week they were all.

Testimony of Tony J. Moraco

Q. That's right?

A. Yes.

Q. Now you claim you didn't come back
315 after August 3rd, but were you in any of the
conferences along about, from the 3rd to the
21st?

A. No; I was not.

Q. You weren't. And the first you knew of the
shutting down of the plant was when?

A. Haven't the exact date, but I came back to the
factory—I went out on a trip to Tennessee and I came
back to the factory and when I did come back, it was
on a Tuesday, and I came back during working hours
and I happened to see a notice on the time clock. In
the meantime, I suppose,—

Q. Were they working on that day, that you came
back?

A. They were working, yes. In the meantime the
committee, I think, was in the office with the man-
agement.

Q. I see. That was on the very day of August
21st, apparently?

A. It was the day before.

Q. It was the day before?

A. Yes, after two weeks.

Q. You didn't enter into that conference at all?

A. No; I didn't.

Q. How old are you?

A. Oh, twenty-two.

Q. Twenty-two. How long have you been working
with Sands?

A. About four and one half years, to be exact.

Q. You came there from the caddy course?

316 A. Yes.

Q. You had caddied for one of the Sands
and he gave you a job there?

A. He did.

Q. You always worked in the shipping department?

A. Not at all times.

Q. Where did you work?

A. I started in the tank department.

Q. And then where did you go?

A. I was shifted down to the shipping department.

Q. And stayed there?

A. And stayed there.

Q. The work there is boxing things for shipping?

Testimony of Tony J. Moraco

A. It is quite clerical work. I was postal clerk, express—

Q. At any rate, you weren't a machinist?

A. I worked on the machines, but I am not a machinist, no.

Q. Not a machinist?

A. No.

Mr. Stanley: I think that is all.

Trial Examiner Danaceau: Any further questioning?

Mr. Witt: Yes, if you will give us a minute please, Mr. Examiner.

RE-DIRECT EXAMINATION

Q. (By Mr. Witt). Tony, you said—

Trial Examiner Danaceau: Let us have a little order please.

Q. (By Mr. Witt). You said sometime in June, that is after you came back on June 3rd, that the committee had a meeting with the management about the five or six or seven men. At that meeting, do you recall whether Garry Sands suggested to you that you bring Potter down for a conference with him and the committee?

A. No.

Q. He didn't. You said that on the morning when you struck the second time; I think that was the following Thursday on June 6th, the men were gathered outside of the plant?

A. Yes.

Q. Did you vote on a strike?

A. No; we didn't vote.

Q. Did you take a formal vote?

A. Well, that might have been called unanimous; all the men were there.

Q. You stated in response to a question of Mr. Stanley's that the management tried out several weeks having other men working in the machine shop and then came back and said it didn't work; about when was that, do you remember? I don't believe you told Mr. Stanley when that was. Do you remember when it was?

A. It might have been a week or two after we went back.

Q. A week or two after you went back. After you went back on June 17th, do you mean?

Testimony of Tony J. Moraco

318 A. Yes.

Q. Might it have been before the strike?

Mr. Stanley: Oh, we will object to that.

Mr. Witt: I want to fix the date.

Mr. Stanley: He was very clear.

Trial Examiner Danaceau: Of course, you can't impeach your own witness.

Mr. Witt: I am not trying to impeach him. He didn't get the date on his cross.

Q. (By Mr. Witt). Is that your best recollection, two weeks after the strike?

A. What strike?

Q. You said you came back on June 17th. Now, this try-out in the machine shop of men from other departments took place when?

Mr. Stanley: I object. He has already said two weeks after he returned to work.

Mr. Witt: I want to fix the time.

Trial Examiner Danaceau: Do you know whether there was just one meeting about that with them?

The Witness: If I remember right, I think we discussed about that before that.

Q. (By Mr. Witt). Before what do you mean?

A. Before that. I mean before we discussed
319 before we went back.

Q. You discussed before you went back?

A. Yes.

Q. Did you discuss it before you went back, before the management tried it out?

A. Yes, sure.

Q. When was that discussion?

A. Well, they discussed that, I am sure they discussed it on the 15th.

Q. On the 15th of June?

A. Yes.

Q. Did you discuss it after you came back on June
17th?

A. Well, that is when the management called us in.

Q. On June 17th?

A. They didn't call us in on June 17th, possibly that week; I am not sure about the date.

Q. It was during that week that you discussed this problem of the machine shop?

A. Yes.

Q. And discussed about the men from other departments working in the machine shop?

Testimony of Tony J. Moraco

A. Yes.

Q. Was it shortly after that that the management tried it out; was it about that time?

A. Why certainly, they were doing it right along.

Q. They had been doing it right along?

A. Yes.

Q. In this discussion that you had with the management, did the committee and the management agree to try it out?

A. They agreed to let it go at that; they agreed to let time work it out the best way.

Q. The management said that?

A. Yes.

Q. Did the committee and the management agree that the management should try it out? You say you discussed it at this time with the management. Did the management agree—

A. No; we didn't agree.

Q. What did the management say at the end of that discussion?

A. Why, we just adjourned the discussion there and just let it go at that.

Q. You said you were laid off on August 2nd or August 3rd, I believe. You also said that the management said they would have to build up the machine shop before they built up the others. Were you present at that discussion?

A. I was not there on the 3rd when they had that discussion.

Q. Were you present at the conference when this was discussed?

A. About the different departments?

Q. No. You said a minute ago that the management said that they would have to build up the machine shop before they built up the other departments?

321 A. I can't recollect whether they said it or not.

Q. You can't recollect?

A. No.

Mr. Stanley: I desire to object to the interrogation of counsel; impeaching his own witness by leading questions.

Trial Examiner Danaceau: That particular question may stand. It is a question of whether he remembers it or not. Proceed. r

Testimony of Tony J. Moraco

Q. (By Mr. Witt). Were you present at any conference as between the committee and the management at which Paragraph Seven in this agreement which you have in your hand was discussed?

A. Certainly.

Q. Was that discussed at more than one conference at which you were present?

A. Well, they always called us in about that. There was a lot of discussion about it.

Trial Examiner Danaceau: The question is were you present? You know what I mean.

The Witness: I know what you mean.

Trial Examiner Danaceau: Well, answer counsel by yes or no as to whether you were present. If there is a further explanation that is needed, counsel will ask you questions.

Q. (By Mr. Witt). Were you present?

322 A. Yes, sure, I was present.

Q. At how many conferences was Clause Seven discussed that you recall?

A. Possibly two or three.

Q. At how many conferences that you attended as a member of the committee was Paragraph Five discussed?

A. Well, that was discussed at the time of the lay-off of the tank department and again at the general layoff.

Q. Were there any conferences which you attended at which Paragraph Five was discussed without there being a discussion of Paragraph Seven, can you answer that question? I am trying to simplify it. Were these two paragraphs always discussed together?

A. No; just five.

Q. Five and Seven are the two Paragraphs I am talking about?

A. I said just five was discussed.

Q. Were there conferences at which just Paragraph Seven was discussed?

A. Yes, there was a conference at the time—well. I don't think there was a conference, as I remember right now, because—may I read that? "That all new employees be laid off before any old employees in order to guarantee, if possible, at least one week's full time before the working week is reduced to three days." Yes, we did discuss about this; now I remember.

Testimony of Tony J. Moraco

Q. Do you remember the date of that discussion?

A. Before the general layoff.

Q. About when was that general layoff, do you remember? Do you mean the general layoff of the new employees?

A. Of all the new employees.

Q. Would that be sometime late in July?

A. Yes.

Mr. Witt: That is all.

RE-CROSS EXAMINATION

Q. (By Mr. Stanley). As I understand your last testimony, you testified that Clause Five was discussed before the men came back to work. You testified to that; that is correct, isn't it? By coming back to work, I mean coming back on June 17th.

A. Well, that was discussed on the 15th, sure.

Q. Sure. Before your contract was drawn, wasn't it; isn't that right?

A. That was before it was signed.

Q. And then after that you say there was at least one conference at which it alone was discussed; you just testified to that, haven't you?

A. Yes, that is right.

Q. When was that conference approximately, before the general layoff or after?

A. That was discussed, I think, after—no, before the general layoff.

Q. By the general layoff, I mean the layoff of the new employees. You and I understand that. That would be some time in July?

A. Yes.

Q. What did you say about that?

Trial Examiner Danaceau: By "you" you mean the committee?

Mr. Stanley: No; I mean him personally.

A. What did I say about that?

Trial Examiner Danaceau: Did you say anything to the management about it at the time of the discussion?

The Witness: We were discussing about it that the newer men should be laid off. That is before the general layoff?

Q. (By Mr. Stanley). Yes. What did you say about it? Did you say anything about it?

Mr. Witt: That's better.

Testimony of Jack Norman

Q. (By Mr. Stanley). Did you say anything about it?

Trial Examiner Danaceau: Did you personally say anything about it?

The Witness: I couldn't remember that I did say anything about it.

Q. (By Mr. Stanley). Who do you remember that did say something about it?

A. Some of the other committeemen.

Q. And Mr. Sands?

A. Yes, Mr. Sands discussed about it.

325 Q. Then what did you mean by that when you testified in answer to Mr. Witt's question whether—or you couldn't remember that you weren't present at the meeting when it was discussed?

Mr. Witt: That wasn't his answer, that he wasn't present.

The Witness: I recollected I was present.

Q. (By Mr. Stanley). You were there when that was discussed; weren't you?

A. Yes.

Mr. Stanley: That is all.

Mr. Witt: That is all.

Trial Examiner Danaceau: It is now four o'clock, gentlemen, and we will adjourn until—unless you have any particular witness that you wish to put on and I am willing to stay another fifteen minutes.

Mr. Witt: We would like to remain as long as possible.

Trial Examiner Danaceau: I again want to urge that counsel be a little more brief and to the point. Let us make a little more progress than we have before. Call another witness. I am willing to stay a little longer.

Mr. Witt: We will call Mr. Norman.

JACK NORMAN,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

326 Q. (By Mr. Witt). Will you give the Reporter your name and address please?

A. Jack Norman.

Testimony of Jack Norman

Q. Where do you live?

A. 6810 Kinsman.

Q. Jack, did you ever work for the Sands Manufacturing Company?

A. I did, sir.

Q. When did you first begin to work for the Company, do you remember? I mean the very first time you began to work for the company?

A. Oh, that is way back. I worked there about ten years ago, something like that.

Q. You were away after that, after working a couple of years, did you leave the job?

A. Yes, sir.

Q. When did you come back after that?

A. Oh, I would come back a year after maybe and a year after that, and then I was away again. I worked on and off, in other words.

Q. This last time you worked for the company, when did you begin then, do you remember?

A. This last time?

Q. Yes, before the strike. Did you begin last year or was it before last year?

A. About last year.

327 Q. You began last year?

A. Yes.

Q. Was that on the Government order or was it before then?

A. It was on the Government order.

Mr. Witt: This production payroll will show that this witness was first employed on April 10th, 1929 and I suppose that was because he was working on and off.

Mr. Stanley: Intermittent.

Q. (By Mr. Witt). Are you a member of the M.E. S.A.?

A. I am, sir.

Q. Were you a member when you were working for the Sands Manufacturing Company?

A. Yes, sir.

Q. Have you had any work since you left the employment of the company?

A. No, sir.

Q. No work whatsoever?

A. No, sir.

Q. Have you been paid any relief since you left the employment of the Sands Manufacturing Company?

A. No, sir.

Testimony of Jack Norman

Q. In what department of the company were you working when you left the company?

A. In the shipping room.

328 Q. In the shipping room. Had you ever worked in any other department of the company before that?

A. I did; I worked—

Q. What other department?

A. The storage room.

Q. In the storage room. Any others?

A. I have worked up in the—oh, that—Emil Tullow's department.

Mr. Witt: Have that show that is the automatic department.

Q. (By Mr. Witt). Have you worked in any other department.

A. I worked in the machine shop.

Q. In the machine shop. Have you worked in any other departments?

A. That is about all.

Q. That's all. Have you done much work in the machine shop?

A. I haven't done much.

Q. How much would you say?

A. I worked about a half hour, taken off and called back again; don't call that much work.

Q. This happened more than one time?

A. Yes, sir.

Q. This happened about how many times; did you say that you went into the machine shop and taken out again?

A. Now and again. That was when they had no other work, just—

329 Q. Who was your boss in the shipping department?

A. Well, Edward McKiernan.

Q. Edward McKiernan was your boss in the shipping department. Did you go on strike with the other members of the M.E.S.A. this year?

A. I did.

Q. Had you been laid off before that?

A. Yes; I was, sir.

Q. What month was that, do you remember?

A. That was in May.

Q. In May of this year. How long were you off at that time?

Testimony of Jack Norman

A. We were off for about a week, sir.

Q. For about a week. Were you called back to work?

A. I was called back.

Mr. Witt: Will the Reporter please mark this Board's Exhibit No. 6?

Q. (By Mr. Witt). Now, Jack, I show you Board's Exhibit No. 6, which purports to be a card addressed to 6810 Kinsman Road and signed by H. J. Sands, Superintendent?

A. Yes, sir.

Q. Is this the card by which you were called back to work in May?

A. Yes, sir.

Q. Did you go back to work after the strike in June this year?

A. I did, sir.

330 Q. About how long did you work after the strike?

A. Well, I worked up to about the 5th of July.

Q. The 5th of July?

A. Yes, sir.

Q. If I ask you if it might have been June the 26th, would you say that was wrong or would you say that was far off?

A. The 26th?

Q. June 26th and not the 5th of July; would that be about right?

A. That would be about right.

Q. Now, did you resign or were you discharged on this date—let me ask you—withdraw that question. Did you leave the employ of the company or were you fired?

A. I was fired, sir.

Q. Will you tell us what happened on the day you were fired?

A. Well, the day I was fired I was taken into Mr. Garry Sands' office.

Q. Did he send for you?

A. The committee took me in.

Q. The committee took you in; the M.E.S.A. committee?

A. Yes.

Q. And what happened when you got into Garry Sands' office?

A. When I walked in there, Mr. Garry Sands says,

Testimony of Jack Norman

"Who is this young man?" "So this is—that is Jack Norman."

Q. Who said that, the committee?

331 A. The committeemen. He says, "Where has he been working?" "He has been working in the shipping department for Edward McKiernan." So Mr. Garry Sands said, "Well, Jack, I am telling you right now that it is slackening down right now and we are going to lay off, so I think we will lay you off to-night." So I looked dumfounded, see, I couldn't understand it. I didn't expect anything about it; nothing happening, so I—Lada, you know, on the committee—

Q. You mean Jindra?

A. Yes, Lada.

Q. Jindra?

A. He says right there in Mr. Garry Sands' office, then he said, "Jack, it is no layoff whatsoever. You are being fired." I said, "I am?" He said, "Yes." So they talked it over there and Mr. Garry Sands talked with the committee there and, of course, I didn't listen to what the committee or Mr. Garry Sands was saying there, but they asked, Mr. Garry Sands asked me if I had anything to say for myself before leaving. Well, the first thing I said, I said, "I think it was a grudge against me."

Q. Well, excuse me for interrupting but let me ask you a few questions. Was Eddie McKiernan present at this conference?

A. He was.

Q. From the very beginning of this conference he was present in Mr. Sands' office?

A. Yes, sir.

Q. When Jindra said that you were being
332 fired, did Mr. Sands tell you why you were being fired?

A. Well, he said something about, "Your work didn't look so good," and this and that and complained about the job.

Q. Who was it, Mr. Sands or Mr. McKiernan?

A. Mr. Sands.

Q. Mr. Sands. And did Mr. McKiernan say anything?

A. Well, Mr. Garry Sands says to Mr. Edward McKiernan, "What about Jack?" So Mr. Edward McKiernan says, he spoke up and he says, "Well, Jack, I told you time after time; I tried to show you this and show you that but you didn't seem to want to grasp this."

Testimony of Jack Norman

because at times I was angry, rushed here and rushed there.

Q. That is all I want.

Mr. Witt: He was going off field, answering another question. You want to hear the answer to that?

Mr. Stanley: Go ahead and finish that.

Mr. Witt: You want to hear that?

Mr. Stanley: No.

Q. (By Mr. Witt). Had Mr. McKiernan spoken to you from time to time about your work before that? Had he complained to you about your work?

A. No, sir.

Q. He had never complained to you before
333 this?

A. No, sir.

Q. Was this the first time that you ever heard any complaint from Mr. McKiernan about your work?

A. Yes, sir.

Q. Was this on the day on which you were fired?

A. Yes, sir.

Q. Did you see Mr. McKiernan later that day?

A. I did, sir.

Q. Did he send for you?

A. No, sir.

Q. Did you go to see him yourself?

A. I did.

Q. Did you talk to him?

A. I talked to him.

Q. What did you say to Mr. McKiernan?

A. I walked into his office and I said—I said to him, "Say Ed, what is the big idear?" And he says to me, "Well, Jack," he said, "I will tell you; there is a lot more of this than you and I know of." "I said "How," just like that. He said, "Don't worry, Jack, I will get you back. I will get you back when we break this union up," and I said to him, "I wouldn't want to come back then." That is all I said.

Q. And is that all he said that you remember?

A. That is all; yes, sir.

Q. Do you remember the date when the men
334 first went out on strike this year; do you remember the day of the month?

A. I can't recall.

Q. Do you remember when the men went back to work after the first strike?

Trial Examiner Danaceau: If you don't remember, say so.

Testimony of Jack Norman

A. I don't remember that.

Q. Did you go back after the first strike?

A. Yes, sir; I did.

Q. You went back after the first strike. At that time did the company object to your going back that you remember?

A. Yes, they did.

Q. Did they object to any others at this time?

A. Yes, they did, sir.

Q. About how many others, do you remember?

A. Well, there were about six of us, I believe.

Q. About six altogether. And was the second strike because of the fact that the company would not take you and the other five back; is that the reason for the second strike?

A. Yes, it was.

Q. You said a minute ago that you went back after the first strike and now you say that the men went out because the company didn't take you back. Can you tell us again whether you went back after the first strike, or was it that the company refused to take you back when all the men went back the first time?

A. Well, they wouldn't take us back the first time, so the men went out, see, to take us back.
So—

Q. Did the company tell you at that time why they wouldn't take you back?

A. Yes.

Q. Who told you? Did you understand my question? I asked you if the company told you why they would not take you back the first time. Did Mr. Garry Sands speak to you then?

A. No. I don't believe he did, sir.

Q. Did Mr. McKiernan speak to you at that time?

A. No, sir.

Mr. Witt: Your witness.

CROSS EXAMINATION

Q. (By Mr. Stanley). How old are you, Jack?

A. Thirty-four.

Q. How many times have you been let go out at Sands?

A. What do you mean? Just this time?

Q. Oh, ever since you started there.

Trial Examiner Danaceau: How many times have you been laid off? I guess that would be the word.

Testimony of Jack Norman

Mr. Stanley: Yes.

Trial Examiner Danaceau: How many times have you been laid off?

The Witness: Several times.

Q. (By Mr. Stanley). A dozen times?

36 Trial Examiner Danaceau: A dozen times?

A. I say several times.

Q. How many times approximately?

A. I would say about six times.

Q. What have you done in between times?

A. I have worked in between times.

Q. Doing what kind of work?

A. Doing a lot of jobs here and there.

Q. Common laborer?

A. Like that, if you call it.

Q. Well, what was it?

A. Common laborer.

Q. Working where?

A. Different shops.

Q. Any place else except shops?

A. No, sir; that is about all.

Q. Each time you left, they asked you to leave?

Trial Examiner Danaceau: Do you understand the question?

The Witness: No, sir.

Q. (By Mr. Stanley). Well, all right. Well, did you quit at any time without the company telling you to quit?

A. You mean with regard to the Sands Manufacturing Company?

Q. Yes.

A. No, sir; not that I can remember.

Q. What?

337 A. Not that I can remember.

Q. Every time you quit, in other words, they told you to quit?

A. Just laid off; slack work.

Q. Laid off. All right. How many times before you joined the M.E.S.A. were you laid off, let us make it quick, three or four times?

A. About three or four times.

Q. That went back how many years; eight or ten years?

A. About that.

Q. M.E.S.A. in existence then?

A. No, sir.

Testimony of Jack Norman

Q. How many different foremen have you worked under out there in Sands; four or five or more?

A. I did.

Q. Ever have one foreman turn you over to another foreman?

A. I did.

Q. Don't you recall that?

A. I did, sir.

Q. The first foreman said that he wanted the other foreman to see if he could do anything with you?

A. Yes, sir.

Q. Yes. Now, you never worked over a half hour at a time in the machine shop at any time; did you?

A. About that.

338 Q. About that. That only occurred two or three times; is that a fact?

A. I said it wasn't steady.

Q. About two or three times you worked in the machine shop?

Mr. Witt: He didn't answer that.

Trial Examiner Danaceau: He has not answered how many times. How many times did you work in the machine shop about a half hour; two or three times?

The Witness: About that.

Q. (By Mr. Stanley). You worked down in the shipping department?

A. Yes, sir.

Q. What were you doing down there?

A. Yes, sir.

Q. What kind of work did you do?

A. Everything in the shipping department.

Q. Nailing up boxes?

A. Catching on the conveyors when the heaters come down.

Q. Taking off the conveyor?

A. Taking off the conveyor and putting on the trucks.

Q. What else did you do besides taking off the conveyor and putting on the truck?

A. I didn't put the conveyor on the truck.

Q. Well, you just caught them off the conveyor?

A. I took the heater—

339 Trial Examiner Danaceau: Let us have order please.

A. —I took the heaters off the conveyors and piled them on the trucks.

Testimony of Jack Norman

Q. I don't get what you said.

Trial Examiner Danaceau: You said taking the conveyors and putting on trucks?

Mr. Stanley: Taking heaters off the conveyors and putting on trucks.

Q. (By Mr. Stanley). Well, you got them off the conveyor and put them on a truck; what else did you

A. Pushed them out of the way.

Q. Pushed them out of the way. What else did you

A. I was—when they had carloads coming, I loaded on the cars.

Q. All right. You loaded on the cars. What else did you do?

A. Bridging cars.

Trial Examiner Danaceau: Bridging cars?

Q. (By Mr. Stanley). That is new to me. What that?

A. Brazing them up.

Q. Brazing them up. I don't understand. Mostly common labor?

A. Yes.

Q. And still this fellow brought you up before the committee and said you couldn't do that; is that right?

A. Yes, sir.

Q. This was a hearing before the committee; wasn't it?

A. Yes, sir.

Q. The shop committee was there, protesting at our discharge; wasn't that true?

A. Yes, sir.

Q. The shop committee finally agreed to it that you ought to be discharged; isn't that right?

A. No, sir; I don't think they did.

Q. They still thought you ought to be retained; is that right?

A. Yes, sir.

Q. Did you hear them say that to the management?

A. I didn't hear them say it, no.

Q. All you know is what they told you afterwards; is that right?

A. Yes, sir.

Q. In the room, you didn't hear them say that they thought you ought not to be discharged; did you?

A. No, sir.

Testimony of Jack Norman

Q. No. All right. Now, you say you were dumb-founded when you came in there. Now, as a matter of fact, you knew during the strike, when you came back to work, that the management was claiming that you weren't efficient?

A. Yes, sir.

Q. So it didn't come to you as any surprise at that time; did it?

341 A. Well, not at that time.

Q. Well, let us get back to the time of the strike. At that time, you came back to work when the first strike was over; didn't you?

A. Yes, sir.

Q. And you heard that the strike was over and you came down, how did you happen to come down? Who told you to come down, or did you just hear about the strike being over?

A. I was working. I was on the strike with them.

Q. Yes, you were picketing, but how did you come to work after the strike was over? That is what I am asking. Who told you to come down?

A. Well—

Q. Or did you just think naturally that the strike is over and I will get back to work?

A. They would take me back.

Q. Who told you to come back, the committee tell you?

A. Mr. Garry Sands.

Q. Where did he see you?

A. At the shop down there when we were taken back.

Q. Did he tell you personally that he wanted you to come back? You don't mean that, do you?

A. I don't understand just what you—

Q. No. I don't think you do. The men came back to work on Monday morning; didn't they, June
342 3rd?

A. June what?

Q. On a Monday morning, and you hadn't seen Sands before that and talked to him, had you? You, personally?

A. What strike are you referring to? The first one?

Q. On Monday morning when the first strike was over, that is what I am talking about, you came down there. How did you come down? How did you happen to come down? That is what I am getting at.

Testimony of Jack Norman

A. Well, we were told by Mr. Garry Sands that the old men would come back first.

Q. No, no. Did you have any talk with Garry Sands before you came down that morning, you, personally?

A. No; I didn't.

Q. You heard that the strike was over, Jack?

A. Yes.

Q. You came along with the rest of the men; didn't you?

A. Yes, sir.

Q. Did you go in the shop?

A. (No answer).

Trial Examiner Danaceau: Did you go right to work?

A. No; I didn't go right to work.

Trial Examiner Danaceau: Where did you go when you came to the shop?

The Witness: Why, we were told to come in then on a Tuesday morning on the next—

43 Q. (By Mr. Stanley). Who talked to you and told you to come back Tuesday morning?

A. The committeemen.

Q. The committeemen. That is what I am getting

at. The committee told you to come the next day?

A. Yes.

Q. Did they tell you at that time that the company was objecting to you and five or six other men coming back to work? Did they tell you that the first day?

A. Yes, sir.

Q. And still they told you to come back the next morning?

A. We came back on a Tuesday morning.

Q. I know, but what did they tell you the first day?

Did they tell you that there was some objections to your coming back? Was that the first day, or did they just tell you to come back Tuesday morning?

A. Come back Tuesday morning.

Q. They didn't say anything about any objection about your coming back when they talked to you the first day, did they?

A. No, sir.

Q. When you came back Tuesday morning, where did you go to?

A. I went to Herbie Sands.

Q. And what did he say to you?

A. Signed up for the jobs.

Testimony of Jack Norman

- Q. Wait a minute. Did you go to work then?
 344 A. Tuesday morning.
 Q. Well, I think you are back after the next time. You mean after the first strike? Didn't the men go out on strike because you weren't given work after the first strike?

Examination by TRIAL EXAMINER DANACEAU

Q. (By Trial Examiner Danaceau). You understand the question?

A. Yes.

Q. How many strikes were there?

A. Two strikes.

Q. Two strikes. Now, after the first strike, did you go back to work or did you go back to work after the second strike?

A. Went back to work after the second strike.

Q. You did go back to work after the first one; is that correct? You did or you didn't?

A. Went back to work after the first strike; that is when it was.

Mr. Stanley: Well, now, I don't want to prolong this examination. You are probably mistaken about that.

Mr. Witt: The record is clear on that unless you want something else.

Mr. Stanley: Yes; there is something else I want.

Trial Examiner Danaceau: May I suggest that you go on with something else and that the records show when he was employed.

Q. (By Mr. Stanley). I want to know when
 345 you came back there—when you went in there you were told not to come back and there was a strike about that; isn't that a fact?

Mr. Witt: Mr. Stanley, we can agree on that.

Mr. Stanley: I want to get his testimony. It is important to know what was told to him.

A. You mean when the cards were mailed to us?

Q. There weren't any cards sent, as I understand this. This was after the strike was over, let us say on a Saturday, and the men came back to work on a Monday and you just told us you were told to come back on a Tuesday. Now, when you came back on Tuesday, who did you talk to?

A. Oh, we came back on a Tuesday.

Q. And then what?

A. We didn't seem to get back somehow. We went into the office.

Testimony of Jack Norman

Q. Now we are getting somewhere.

A. I don't understand you.

Trial Examiner Danaceau: Now why didn't you get back? Anybody tell you why you weren't taken back?

The Witness: Us men were to be on the charge of discrimination.

Q. You men were to be on a charge of discrimination?

A. Yes.

Q. Who told you that?

A. The way we understood it.

346 Q. Who told you that?

A. (No answer).

Q. Who told you that you were being discriminated against?

A. It was printed in the paper that way, when we read it.

Examination by TRIAL EXAMINER DANACEAU

Q. (By Trial Examiner Danaceau). Did you talk to anybody at the company when you came back?

A. We went into the company on Tuesday morning.

Q. Where did you go, into the company's office?

A. We went into the company's office.

Q. Who was in that office?

A. Mr. Garry Sands.

Q. Who else?

A. Mr. Herbie Sands.

Q. Who else?

A. The foreman.

Q. Who else? Were you?

A. Me?

Q. Any other workingmen?

A. The working men that was with me.

Q. How many other working men that were with you?

A. About six of us all told.

Q. Did you ask them why you weren't to be taken back?

A. We asked why we wasn't taken back.

Q. Who did you ask that question of?

347 A. Of Mr. Garry Sands.

Q. What did he say?

A. He says, "Did you see your committee?"

Q. What did you say?

A. I said no, not yet.

Testimony of Jack Norman

Q. What else did he say?

A. He said, "The committee can tell you more about it."

Q. Anything else said?

A. He said on that—he says, "See Mr. Harry Potter. Your committee is supposed to take it up."

Q. Anything else said?

A. That was all that was said.

Trial Examiner Danaceau: Did you want to say anything, Mr. Stanley?

Mr. Stanley: Excuse me, but you are doing so well, go ahead.

Q. (By Trial Examiner Danaceau). Nothing else said at that meeting?

A. No, sir.

Q. Well, then, did you go to see Mr. Potter?

A. We went down to see Mr. Potter.

Q. Did you have a meeting with Mr. Potter?

A. We had just a little talk with him.

Q. What was said at that meeting? What did you say to Mr. Potter?

348 A. We said, "What is the idea we are out and the other men are in and we are not back?"

Q. What did he say to you?

A. He said, "Go back over to the shop and get in touch with your committeemen." We got in touch with the committeemen and we said to them, "Why is the reason they are not taking us back," so they get in touch with Mr. Potter then that night and the next morning why we was over to the shop there because we wasn't working there yet and the shop was out.

Q. They were out on strike then?

A. They was out.

Q. There was only one meeting you had in the office of the Sands Company? You had only one meeting in the office in which you are there and Mr. Sands and the other Mr. Sands were present. You didn't go back again?

A. No, sir.

CROSS EXAMINATION (Continued)

Q. (By Mr. Stanley). Then, of course, you came back and went to work a day or two and then there was a hearing; isn't that so?

A. (No answer).

Q. How long did you work before this hearing that you were let go?

Testimony of Albert Farrell

A. I worked about, I judge, two weeks.

Q. Two weeks and then you had a hearing?

349 A. Yes, sir.

Q. And then you had a hearing?

A. Then they let me go.

Q. And then you were let go?

A. Yes.

Trial Examiner Danaceau: We will adjourn at this time until nine thirty in the morning.

(Thereupon, at 4:37 o'clock p. m., adjournment was taken until the following day at 9.30 o'clock a. m.)

WEDNESDAY, NOVEMBER 27, 1935

(The hearing was resumed at 9:30 o'clock a. m., pursuant to adjournment.)

ALBERT FARRELL

called as a witness for the National Labor Relations Board, being first duly sworn. testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Witt). Give the Reporter your name and address please?

A. Albert Farrell, 2903 East 61st Street.

Q. Mr. Farrell, did you ever work for the Sands Manufacturing Company?

A. I did.

Q. Do you recall when you began to work for the company?

A. It was about 1924.

Q. 1924. Until when did you work for the company?

A. Until the last layoff.

350 Q. Until the last layoff. Do you remember when that was?

A. About August 21st.

Q. August 21st, 1935?

A. Yes.

Q. Have you done any work since that date?

A. Yes.

Q. What kind of work have you done?

A. WPA work.

Q. When did that begin?

Testimony of Albert Farrell

A. Last week, Wednesday.

Q. Last week, Wednesday. I think the calendar will show that is the 20th of November. At what rate are you being paid on that job?

A. Fifty-five dollars a month.

Q. Fifty-five dollars a month.

Mr. Stanley: May I suggest that on all these, you are going to have them all together—oh you mean fifty-five dollars a month with WPA?

Mr. Witt: Yes.

Mr. Stanley: Excuse me.

Mr. Witt: Did you get any relief after you were laid off on August 21st?

A. Yes.

Q. About how much and when did you get it?

351 A. To date is around ninety dollars.

Q. Ninety dollars. Are you on relief rolls now?

A. When you get a WPA job, you are taken off.

Q. What was your job with the company when you are working?

A. I was foreman.

Q. What department were you foreman of?

A. Coil room.

Q. Did you get paid on a salary or hourly basis?

A. Hourly rate.

Q. Were you ever paid on a salary basis?

A. Yes.

Q. When you switched to hourly rate, when was that?

A. When we joined up the union.

Q. When did you join up with the union?

A. Along about April or May, 1934.

Q. Are you still a member of the union?

A. Trial Examiner Danaceau: What union have you reference to?

A. M.E.S.A.

Q. Were you switched to an hourly rate just about the time you joined the M.E.S.A.?

A. Right after we joined the M.E.S.A.

Q. Right after you joined the M.E.S.A. Did you get an increase in pay under the agreement made about that time between M.E.S.A. and the company?

A. I believe we did.

352 Q. Did you get an agreement this year under the agreement made between the company and the M.E.S.A.?

Testimony of Albert Farrell

Mr. Lodish: You mean an increase?

Mr. Witt: I mean an increase.

A. You mean this year?

Q. This year.

A. Yes.

Q. Was that after the strike or before the strike?

A. That was after the strike.

Q. As foreman of the coil room, did you have the right to hire men?

A. No.

Q. Did you have the right to fire men?

A. No.

Q. Did you have the right to recommend to some member of the management that men be fired?

A. Yes, sir; that is the way it worked.

Q. What member of the management would you make a recommendation to?

A. The superintendent.

Q. Who was that?

A. Herbie Sands.

Q. Have you come back to the plant since you were laid off on August 21st?

A. Yes, sir.

Q. When was that?

353 A. About a week after the strike.

Q. About a week after the strike?

A. Yes; not after the strike but after the shutdown.

Q. What was the occasion of your going back to the plant at that time?

A. I was trying to buy a stove off the engineer down in the plant.

Q. Did you meet any of the management at that time?

A. Yes, sir.

Q. Who did you meet?

A. Herbie Sands, the engineer and Garry Sands.

Q. Did you have a conversation with Garry Sands?

A. Yes, sir.

Q. Who began the conversation?

A. Garry Sands.

Q. And what did he say?

A. He was telling me the price of different materials he was using and he also said that we have to take a twenty-two and a half cents cut while we were working.

Q. How much were you getting per hour?

A. Eighty cents per hour.

Testimony of Albert Farrell

Q. What else was he saying?

A. He was saying business wasn't as good as it used to be.

Q. Did he say anything else?

354 A. I don't remember anything else; he was talking about the Canadian plant mostly.

Q. What did you say to Garry Sands?

A. Well, I said to Garry Sands that twenty-two and a half cents an hour cut—I told him I thought it was too much. I told him that really if he did talk to the committee they would agree to take a cut.

Q. Did I understand you to say that if he talked to the committee?

A. Yes.

Q. Did he say anything in response to that?

A. No; he didn't.

Q. Did you discuss the M.E.S.A. or the A. F. of L.?

A. Yes.

Q. Or unions in general?

A. Yes, sir.

Q. Who began that discussion?

A. I don't know just how it happened. He said he didn't know whether the M.E.S. was trying to break him or not.

Q. He just mentioned it as M.E.S.?

A. Yes.

Q. Did you mention the M.E.S.A. before in that conversation?

A. No; I don't think I did.

Q. Did you say anything to him before about this M.E.S.A.?

A. Did I say anything to him?

355 Q. Yes.

A. No.

Q. Do you recall anything else that he said?

Trial Examiner Danaceau: Have you any specific reference to anything?

Mr. Witt: Well, I will withdraw the question.

Q. (By Mr. Witt). Did you ever work in the machine shop while you were with the company?

A. Yes, sir.

Q. When was the last time you worked in the machine shop; do you remember?

A. I think it was about June or July; those two months, this year.

Q. Can you fix that date more exactly for us? Was it before the strike or after the strike?

Testimony of Albert Farrell

A. It was after the strike.

Q. It was after the strike?

A. Yes.

Q. Had you worked in the machine shop before that?

A. Yes.

Q. When was the last time before this time you just mentioned, give us your best recollection on it; about when?

A. Well, here is the way it was. I did a lot of maintenance work around there and sometimes there was a job to be done and nothing else to do, so I worked there. The last time I remember I worked steady was possibly three years ago, four years ago.

Q. You mean that was the last time you worked steady in the machine shop?

A. That is for a length of time.

Q. How long a period was that?

A. Possibly two weeks.

Q. That is after the strike that you worked in the machine shop. How much did you work there?

A. About two days.

Q. About two days. About how many times all told have you worked in the machine shop? You already mentioned two days. How many times?

A. Quite a few.

Q. Are you prepared to give us an estimate as to how many times altogether?

A. I believe that would be quite hard to say that.

Mr. Witt: Your witness.

CROSS EXAMINATION

Q. (By Mr. Stanley). You are a foreman in the coil room or core room?

A. Coil.

Q. At the time you worked in the machine shop those two days this summer, was work slow in the coil room?

A. Yes, it was.

Q. You asked to be transferred up there to the machine shop or did the committee do that?

A. No, sir; I was told by the superintendent.

Q. What kind of work did you do up there?

A. I sat on a big lathe there and two of us put up the counter shaft.

Q. You did run the lathe; you did something in the way of a millwright; setting up?

Testimony of Albert Farrell

A. Yes, sir.

Q. You did something between millwright work and maintenance work?

A. Yes, sir.

Q. How much an hour did you get at that time?

A. I was being paid the regular wage, eighty cents.

Q. You were being paid at the rate of eighty cents in the coil room, as a foreman in the coil room; weren't you?

A. Yes, sir.

Q. When you went up to the millwork up there, you still got your wages as a foreman?

A. Yes, sir.

Q. When that particular job of millwright work or maintenance work was over, you went back to your regular work?

A. I don't know now whether I did or not. I believe—I don't know whether I went back to the coil room or not. I am not sure.

Q. That is all you did, that one job?

358 A. Yes.

Q. You are not a machinist?

A. No, sir.

Q. You don't run lathes and machinery?

A. I can run them.

Q. But you haven't?

A. I have but not at Sands.

Q. You have been at Sands how many years?

A. About thirteen, fourteen years; something of that sort.

Q. When you had your talk that week after August 21st, you weren't called in?

A. No, sir; I was not.

Q. When you did come in, you just gossiped with the Sands?

A. No, sir; I didn't gossip with him. He came to me first.

Q. When did you come to talk? It was just a talk; wasn't it?

A. It seemed to be that way at the time, but it turned out to be different.

Q. You were interested in having the shop opened up again?

A. Yes, sir; I thought it should.

Q. In other words, you were discussing things about the shop so it could be opened?

Testimony of Albert Farrell

A. Yes, sir; I had made up my mind to go back to work; I don't know when.

Q. How many employees were under you in
359 the coil room?

A. I had eleven men.

Q. Did they all belong to the M.E.S.A.?

A. I believe all but one.

Q. Who is he?

A. I don't recall his name. He was a new man just came in there.

Q. Came there in the fall with the Government order?

A. Came after the strike.

Q. Came in the summer?

A. Yes, sir.

Q. And stayed?

A. He stayed until the first layoff.

Q. Did the coil room shut down this summer?

A. Yes, sir.

Q. Where did you employees go, the men in the coil room, the old men?

A. Most of them, I believe, were sent to the storage room.

Q. And anywhere else?

A. I know there was some down the tin shop and I believe there was one man sent to the machine shop and took this one man I am referring to to the machine shop.

Q. The man sent to the machine shop; did you know about his experience?

A. Yes.

Q. What was his name?

360 A. Joe Blaha.

Q. He has been in the coil room how long?

A. About nine years.

Q. One thing about this twenty-two and a half cent cut that you are talking about. When you discussed that, that was upon the basis of a guaranteed work or salary; wasn't it?

A. I don't quite get that. Will you make it clearer?

Q. Well, when you discussed with Mr. Sands—

A. Yes.

Q. —the possibility that some of the men might return at a lesser wage than before—

A. Oh, yes.

Q. —that that would be upon a guaranteed wage or salary. By that I mean steady work.

Testimony of Albert Farrell

A. There was nothing said about that—just a minute. Let me get this clear. I believe Garry did say something about that if we did take a cut, that he would try to turn out the work; that is, have more days in the week, more days to work.

Q. Steady employment?

A. More employment.

Q. More employment for fewer men but steady employment?

A. I don't know about fewer employees.

Q. But steady work?

A. Yes, sir; I think he did say that.

Q. You were discussing the possibility of
361 that; weren't you?

A. Yes.

RE-DIRECT EXAMINATION

Q. (By Mr. Witt). After your layoff on August 21st, did you attend any meetings of the members of the M.E.S.A.?

A. August 21st?

Q. You were laid off?

A. Yes, after that, yes.

Q. About what time was this that you attended the meeting of the M.E.S.A.?

A. Possibly three or four weeks later.

Q. Three or four weeks later after you were laid off?

A. Yes, sir.

Q. What was discussed at that meeting?

A. Why—

Mr. Stanley: I object.

Mr. Witt: I withdraw the question.

Q. (By Mr. Witt). After that meeting, did you do any picketing?

A. Yes.

Q. How long did you picket?

A. For a few days, I believe, three or four or five days, steady picketing.

Q. You told us a few minutes ago that you worked in the machine shop from time to time?

A. Yes, sir.

362 Q. Were there any complaints in the machine shop?

A. Any complaints?

Q. About your work?

Testimony of Albert Farrell

A. No, sir; there were not.

Q. You also testified you were foreman in the coil room?

A. Yes, sir.

Q. Were there any complaints about your work in the coil room? After you came back this year, after the strike on June 17th?

A. No; I don't believe there was.

Q. You said a minute ago that the coil room was shut down?

A. Yes.

Q. And you were sent to the other departments?

A. Yes.

Q. Can you tell us the date of that shutdown?

A. Possibly a week before the layoff. I don't recall the exact time, but I know it was a week before the strike, before the layoff.

Mr. Stanley: So as to get it clear, you mean August 21st.

Q. (By Mr. Witt). You meant August 21st?

A. Yes.

Mr. Witt: That is all.

RE-CROSS EXAMINATION

Q. (By Mr. Stanley). On these occasions when you worked at the machine shop, you told us about this one, this summer, was the work before that time in the machine shop similar to that which you did this summer?

A. No.

Q. To be specific, was it work on the lathes, the machines?

A. I did bench work before.

Q. What kind of work is that?

A. That is assembling valves, water valves, gas valves.

Q. And you did that at times when you were slack in your own department; isn't that so?

A. No; not all the time. When they got busy and needed work to get out.

Q. What I am getting at is was it steady employment there or just emergency work?

A. Emergency work.

Q. There was something in this case said about employment of relatives. Did you have relatives working in the shop?

Testimony of Emil Tulow

A. Yes.

Q. How many?

A. One.

Q. In what department?

A. In the storage department.

Q. That relative is Jindra, the committeeman?

A. Yes, sir.

Mr. Stanley: That is all.

Trial Examiner Danaceau: That is all.

EMIL TULOW,

364 called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Witt). What is your name?

A. Emil Tulow.

Q. Where do you live?

A. 12013 Holborn.

Q. Emil, did you ever work for the Sands Manufacturing Company?

A. Yes, sir.

Q. Do you remember when you began to work for the company?

A. June 20th, 1920.

Q. June 20th, 1920. Until when did you work for the company?

A. I believe the last day was August 30th this year.

Q. August 30th, 1935?

A. Yes.

Q. What kind of work did you do for the company?

A. Mostly spraying and crating.

Q. Were you laid off on August 30th?

A. Yes.

Q. Did you have any work since that day?

A. Yes, sir; I am working.

Q. When did you begin to work?

A. October 3rd.

Q. And did you work—did you get a weekly salary?

A. No, sir.

Q. Do you get paid on an hourly rate?

365 A. Hourly and piecework.

Q. About how much do you get a week?

A. It averages about twenty.

Testimony of Emil Tulow

- What is your hourly rate?
Forty cents.
What is the piece rate?
That is different prices.
The total you just said comes to around twenty
ars a week?
Around twenty.
Did you obtain any relief after you were laid
on August 30th?
No.
Are you a member of the M.E.S.A.?
Yes.
When did you join the M.E.S.A.?
I don't remember the date.
Was it this year or last year?
Oh, I joined when we all joined.
Will you answer my question? Would it be
year?
Yes, 1934.
1934?
Yes.
When you worked for the company, did you
ever do any work in the machine shop?
A. Not what you call regular work in the
machine shop.
Q. By that you mean you would only work for
ort periods?
A. No; I just done a little rough grinder work.
Mr. Stanley: Will you please talk a little louder
ase?
Mr. Witt: Please take your hand away from your
uth.
A. Well, I have had low blood pressure and haven'
l any sleep.
Trial Examiner Danaceau: Speak up louder. Don't
nervous about it.
Q. (By Mr. Witt). How many times did you work
the machine shop altogether; can you tell us that?
A. Two or three days, not full days though.
Q. About how many different occasions?
A. Twice.
Q. Twice. When was the last time, do you re-
ember?
A. No; I couldn't say the date.
Q. Was it this year?
A. I wouldn't positively say.

Testimony of Emil Tulow

Q. What was your position? What did you say your department was?

A. Finishing department.

Q. What was your position in the finishing department?

A. Well, up to the unionization I was a foreman. After that I was just called a leader.

Q. Who changed your title?

367 A. Herbie Sands.

Q. Did he tell you by word of mouth that your title was changed from foreman to leader?

A. I believe he did.

Q. At the time you were laid off, you were being paid on a salary or hourly rate?

A. Hourly rate.

Q. Were you ever paid on a salary?

A. Yes.

Q. When were you switched?

A. When we unionized.

Q. Did you have a right to hire people for the finishing department?

A. No.

Q. Did you have the right to fire people in the finishing department?

A. No.

Q. Did you have the right to recommend to have people fired?

A. Yes.

Q. Who would you make your recommendations to?

A. Herbie Sands.

Q. Did you always work with the men in the finishing department?

A. I always worked.

368 Q. You said you were laid off. Did you have an occasion to go back to the plant after you were laid off this first time?

A. After the 21st you mean?

Trial Examiner Danaceau: The 21st of August.

A. Yes; I was called in one day.

Q. A minute ago you said you were laid off on August 30th?

A. No; I said that was the last day I worked.

Q. Did you say you had been laid off on August 21st?

A. Yes.

Q. Did you say you worked on August 30th?

Testimony of Emil Tulow

A. Yes.

Q. How did you get called?

A. I left a telephone message with the receiving clerk.

Q. You left a telephone message with the receiving clerk. When did you leave it?

A. I left the telephone number with the receiving, shipping clerk, on August 29th and I got this message to come in August 30th.

Q. You worked on August 30th?

A. Yes.

Q. And were you paid on that day?

A. Yes.

Q. Who paid you off?

A. Herbie Sands.

Q. Did he say anything to you at that time?

A. He didn't. I asked him a question.

69 Q. What question did you ask him?

A. I asked him if the factory would start running after Labor Day.

Q. Did he answer the question?

A. Well, he said he couldn't tell me anything.

CROSS EXAMINATION

Q. (By Mr. Stanley). How many men worked under you?

A. At one time had about eight.

Q. How many this summer?

A. None; just occasionally.

Q. Nobody worked under you regularly this summer?

A. Not this summer.

Q. And practically all your work was spraying and painting?

A. Yes, sir.

Q. You always have been a spray painter; haven't you?

A. Not in the beginning.

Q. How many years have you been a spray painter?

A. About twelve years.

Q. That is what you are doing now?

A. I have been doing that.

Q. Now on the occasion since the M.E.S.A. has been in there, have you had any occasion to have anybody fired in your department?

A. No, sir.

MICRO

TRADE M



MICRO
EDITION

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICRO

901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20001

CARD
MARK **®**

22

CARD
S, INC.

MICROCARD AND MICROFICHES
3037, PHONE (202) 333-6393

W
8
-
9
9

m
microcard

Testimony of Frank Dolish

- Q. So you don't know how that would work out?
- A. Well, I understood.
- 370 Q. If you wanted to discharge—if you thought somebody should be discharged—
- A. If I would have somebody temporary and if I wasn't satisfied, I would have to report to Herbie Sands.
- Q. Then where would it go?
- A. Herbie Sands would decide what to do.
- Q. What about the M.E.S.A. committee?
- A. Well, the man would have to have a hearing.
- Q. Before he was discharged?
- A. Yes.
- Q. As a matter of fact, you didn't have a case to go through that process, did you?
- A. No; I didn't.
- Mr. Stanley: That is all. Oh, there is one question that just occurred to me. Will you step back?
- Q. (By Mr. Stanley). I don't care to ask you where you are now employed, but is that a shop?
- A. Yes.
- Q. An M.E.S.A. shop?
- A. No.
- Q. It is not?
- A. No.
- Q. Have you joined any other union in going into that shop?
- A. No.
- Q. It is an open shop?
- 371 A. Yes.
- Q. It is an open shop; neither M.E.S.A. nor A. F. of L.?
- A. Yes.

FRANK DOLISH,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

- Q. (By Mr. Witt). What is your name and address please?
- A. Frank Dolish, 2954 East 57th.
- Q. Frank, did you ever work for the Sands Manufacturing Company?
- A. Yes.

Testimony of Frank Dolish

Q. When did you begin to work for the company, do you remember?

A. I think it was March 1st, 1921.

Q. March 1st, 1921?

A. Yes, sir.

Q. If I asked you if it might have been about March 1st, 1922, would you say I was wrong?

A. Well, I don't know.

Q. Well, the payroll shows 1922?

A. I know it was March 1st.

Q. But you aren't sure whether 1921 or 1922?

A. No.

Q. Until when did you work for the company?

A. Until August 21st this year.

372 Q. At that time you were laid off?

A. Yes.

Q. Are you a member of the M.E.S.A.?

A. Yes, sir.

Q. When did you join the M.E.S.A.?

A. I think it was May, 1934.

Q. What was your job with the company?

A. I was foreman up until the time of the NRA and after the NRA came in I was a leader or keyman.

Q. While you were with the company, did you ever do any work in the machine shop?

A. Yes, sir.

Q. When was the last time you worked in the machine shop?

A. Oh, about two years ago.

Q. And about how long were you in the machine shop at that time?

A. At that time I was in there about three weeks at one stretch.

Q. How many other times have you been in the machine shop?

A. I don't know how many times I have been in there. I was in there plenty. I couldn't just say how many.

Q. Were there ever any complaints about your work in the machine shop when you worked in the machine shop?

A. No, sir.

373 Q. You said a minute ago that you were a leader or a keyman in the Sands Company; what department was that?

Testimony of Frank Dolish

A. The instantaneous department.

Q. At the time you were laid off, were you paid an hourly rate?

A. Yes.

Q. When the M.E.S.A. and the company made an agreement in 1934, did you get an increase under that agreement?

A. Yes, sir.

Q. When the M.E.S.A. and the company made an agreement in June, 1935, did you get an increase under the agreement?

A. I don't know whether it was that agreement or not.

Mr. Stanley: Can't we shorten this? There were some that got a ten percent increase before the strike and some others who got an increase by reason of the settlement of the strike.

Q. (By Mr. Witt). Did you get an increase after the strike this year?

A. I got one increase. I don't remember when it was though.

Q. Well, you remember you went on strike this year?

A. Yes, sir.

Q. Was there a settlement of that strike? Was there an agreement made after that strike?

A. Yes.

Q. Do you know whether that agreement provided for wage increases?

Mr. Stanley: There is no question about that.

374 Q. (By Mr. Witt). Did you get an increase under that agreement?

A. Yes, I did.

Q. Did you get an increase under that agreement?

A. Yes, I did.

Q. As leader in your department, did you have a right to hire men?

A. No, sir.

Q. Did you have a right to fire men?

A. No, sir.

Q. Did you have a right to recommend that men be fired?

A. Yes, sir.

Q. To whom did you make such recommendations?

A. When Thomas was there, I made it to him, and lately Herbie Sands.

Testimony of Frank Dolish

Q. Who is Thomas?

A. He was superintendent before Herbie Sands.

Q. Did you work with your men in your department?

A. Yes, sir.

Q. At all times?

A. Yes, sir.

Q. You said a minute ago you were laid off on August 21st?

A. Yes, sir.

Q. Were you laid off by notice or did Garry or Herbie Sands tell you that you were laid off?

375 A. Notice on the clock.

Q. Can you tell us how that notice read?

A. Mr. Stanley: Just to save time. There is no question about the wording of the notice.

Mr. Witt: Well, let us have that read into the record now.

Trial Examiner Danaceau: The witness may answer just what he saw and that will save time.

Mr. Witt: Just takes a second.

A. The notice on the clock read that this factory would shut down Wednesday evening, August 21st, until further notice.

Mr. Witt: Did you have a suggestion, Mr. Examiner?

Trial Examiner Danaceau: I was going to suggest that we refrain from questioning the witnesses on matters that we have already agreed upon.

Mr. Witt: I was not sure whether we had agreed on that. I will try not to ask that again.

Q. (By Mr. Witt). Did you have occasion to go back to the shop after you were laid off on August 21st?

A. Yes.

Q. Did you go back yourself or were you sent for?

A. Sent for.

Q. Who sent for you?

A. Garry Sands.

Q. About when was this he sent for you?

A. August 31st, on Saturday morning.

376 Q. You went in?

A. Yes, sir.

Q. What did he say to you when you went in?

A. Well, I went in there and he says to me, "Well, Peewee, I like you." He says, "You know, I had a happy thought; that is the reason you are here." And then he told me that if I wanted to work there I would have to take a cut.

Testimony of Frank Dolish

Q. What did you say to that?

A. Well, I didn't say anything right away. He beat around the bush for quite a while and then he said to me, he says, "You accept my proposition?" I said, "Well, I can't accept no proposition. You didn't tell me what the size of the cut was." And then he figured it out, and the cut was from eighty and two-fifths cents an hour to fifty-eight cents.

Q. What did you say about that proposition?

A. Well, I didn't say anything right away, and then he told me that he would give me a few days to think it over, and he gave me until the following Wednesday.

Q. The calendar will show the following Wednesday was September 4th. Did you come back the following Wednesday?

A. Well, before he told me to come back the following Wednesday, he told me that if I accept his proposition that he would take care of my insurance and guarantee me five days a week.

Q. This was still on August 31st, that first 377 Saturday?

A. Yes.

Q. Did you come back the following Wednesday?

A. Yes, I did.

Q. What did you say to him?

A. Well, I walked into the office and he asked me, "Do you accept my proposition?"

Q. What did you say?

A. I said, "No." He said, "Why not?" I said, "The cut is too big."

Q. Did he make any other offer?

A. He made another offer and he raised the offer two cents an hour, that is sixty cents an hour.

Q. And then what did you say?

A. Well, I didn't say anything right away, but after he made that offer, he said to me, "You have a new organization here," and after he told me that I asked him, "Let me ask you one question." He said, "Go ahead." I said, "If Bill Brandt or Al Farrell was coming back." He said, "What you driving at?" I said, "How about the twenty-nine old men?" He said, "That's something I can't tell you." After he told me that, I walked out.

Q. Did you meet anybody when you went out?

A. Well, after I left the factory I went over to see Lada and I told Lada about it.

Testimony of Frank Dolish

Q. That is Lada Jindra?

A. Yes.

Q. That is the same day?

A. The same day.

Q. Then what did you do?

A. Then I laid around there for a while. There were about seven or eight of the other fellows working in the factory. I guess I was around there a half hour, and Pansky and Linski came in and then Pansky and Jindra went to the office to tell Potter.

Q. Did you wait while they went to see Potter?

A. Yes; I waited.

Q. Were the others staying there?

A. Yes; all stayed there.

Q. Did you wait until Pansky and Jindra came back?

A. Yes.

Q. What did they tell you when they came back?

A. They—

Mr. Stanley: I object.

Trial Examiner Danaceau: Overruled. It is hearsay.

Mr. Witt: I would rather withdraw the question, Mr. Examiner, please.

Q. (By Mr. Witt). Did you go to a meeting the next day?

A. Yes, sir; eleven o'clock.

Q. Where was that meeting held?

A. The M.E.S.A. office.

379 Q. Who told you about that meeting?

A. Pansky and Jindra when they came back.

Q. Did you yourself tell any of the employees about this meeting?

A. I did.

Q. Did you picket after the meeting?

A. I did.

Q. Have you had any work, Frank, since you were laid off?

A. No, sir.

Q. By the Sands Manufacturing Company?

A. No, sir.

Q. Have you gotten any relief?

A. No, sir.

Mr. Witt: Your witness.

CROSS EXAMINATION

Q. (By Mr. Stanley). How much time did you work, say from January 1st onto August 21st, or I will—

Testimony of Frank Dolish

withdraw the question and put it this way. Did you work every day, every working day from January 1st, 1935 onto August 21st, 1935?

A. No.

Q. How much time did you lose?

A. Well, that is something I couldn't say.

Q. Well, approximately how much?

Mr. Witt: If he made the question more specific—

Trial Examiner Danaceau: Well, I imagine the
380 witness can answer the question. Do you know about how much time approximately?

The Witness: I don't know. It might be around between seven and eight weeks; I wouldn't say for sure.

Q. (By Mr. Stanley). Out of approximately seven to eight months?

A. About that.

Q. Yes. How many days a week did the shop work?

Mr. Witt: I wish these questions would be a little more specific. He is covering a very broad period here and the record will show—

Mr. Stanley: Then withdraw it.

Trial Examiner Danaceau: Withdraw the question.

Q. (By Mr. Stanley). Did you work a different number of hours regularly during the year, or was it all forty or forty-four or forty-eight; what was it?

A. I think most of it was forty hours a week; most of it was; not all of it.

Q. How many days a week?

A. Five days.

Q. Was the regular shop week, say, a five-day week?

A. Yes, sir.

Q. Therefore, when he said he would guarantee you five days a week, what did you understand him to mean; steady employment without layoff?

381 A. Yes, sir.

Trial Examiner Danaceau: Speak up so the Reporter can hear you.

Q. That is correct; isn't it?

A. Yes, sir.

Q. Therefore, as you had lost during the year approximately two months out of eight, you were working just about three quarters of this time up to August 21st during the year; weren't you?

A. About that.

Mr. Witt: Read the answer please.

(Last answer read by the Reporter.)

Testimony of Frank Dolish

Q. (By Mr. Stanley). And his suggestion to you was steady employment about three quarters the rate that you had been paid?

Trial Examiner Danaceau: Now, just a minute. This is all in the nature of argument.

Mr. Stanley: It is arithmetic.

Trial Examiner Danaceau: It is repeating the same testimony in another way. He stated that. Let us go on to something else.

Mr. Stanley: I was coming to the next question, which would not be intelligible without that.

Trial Examiner Danaceau: Proceed.

Q. (By Mr. Stanley). You had, before you
382 joined the M.E.S.A., that very sort of an agreement; hadn't you? You were working steadily?

A. Yes, sir.

Q. And you had at times when there wasn't work for you in the instantaneous department been shifted to other work?

A. Yes, sir.

Q. And wasn't Mr. Sands suggesting to you that he might be able with a fewer number of men to give regular steady employment and guarantee you full time, and when your department was not working, that you could be shifted to other departments; was that the substance of that talk between you and Mr. Sands?

Mr. Witt: I object. That is a very improper question.

Trial Examiner Danaceau: It contains several things.

Mr. Stanley: It is a double barreled question; I grant you that it has implications in it.

Trial Examiner Danaceau: He may answer what the substance of the conversation was.

Mr. Stanley: It is objectionable because I asked him several questions in one. I will withdraw it and put it this way.

Trial Examiner Danaceau: Have the question withdrawn.

Q. (By Mr. Stanley). Included in your talk with Mr. Sands, he stated that you might under this arrangement, if it were satisfactory to you, do work other
383 than, in addition to work in your department when your department was slow?

A. Well, he didn't put it to me that way.

Q. Well, there are periods during the year, Mr. Dolish, in every year when there is no work in the instantaneous department for a time; isn't that true?

Testimony of Frank Dolish

A. That's true.

Q. And this was work that was to be done all throughout the year that he was talking about, without layoffs; that is correct, isn't it?

A. Yes.

Q. That's right, and you first objected to this suggestion because you thought that the cut was too big?

A. Yes, sir.

Q. How many men worked in your department ordinarily?

A. At the time of the layoff; I was there alone. I was in there but, oh, say the last five years, I was in there practically all alone.

Q. So there is no way of comparing your eighty cent wage with any one doing similar work; is there?

A. I don't know about that.

Mr. Witt: We do not want to object on technical grounds, but we do want to save time.

Trial Examiner Danaceau: Since you have gone past that—

Mr. Stanley: Well, he said no, so—

Q. (By Mr. Stanley). Well, what did he mean? What insurance did he refer to?

384 A. Well, they have a factory insurance there.

Q. That is a group plan insurance?

A. Yes, sir.

Q. It is not an employer's liability insurance?

A. I don't know what it is. I never looked at it.

Q. Now, you had no occasion to fire anybody, did you, after the M.E.S.A. was there?

A. I never did.

Q. There wasn't anybody working under you?

A. The last five years I had men working for me.

Q. But since the M.E.S.A. did you have men working for you?

A. Yes, during that last Government order I think I had three men; up until this layoff I had two.

Q. I don't understand you.

A. I told you the last five years I practically worked all by myself in the department.

Q. Neither of those two men working for you were fired at any time?

A. No, sir.

Mr. Stanley: That is all.

*Testimony of Frank Dolish***RE-DIRECT EXAMINATION**

Q. (By Mr. Witt). Frank, in answer to one of Mr. Stanley's questions, you said you had been out seven or eight weeks from the first of the year, would that
 335 seven or eight weeks include the period of the strikes in May and June?

A. I think that would include the strikes. I don't know just how many weeks we worked three days a week. I believe that would cover all those three sessions.

Q. Now after the strike, when you went back to work on June 17th after the strike, did you at that time work five days a week or three days a week?

A. We were working five days a week, I think, right after we came back.

Q. At a later date, did you switch to three day schedule?

A. Yes, sir.

Q. At about what time was that switch made?

A. I believe we worked three days up until the 21st of August.

Q. You mean two weeks before the layoff you worked?

A. No; I am taking that back. One week.

Q. One week before the layoff you worked three days a week?

A. Yes.

Q. Until then you had worked five days every week until you came back after the strike?

A. I think from the start of the year.

Q. No. I didn't ask you that. I asked you after the strike?

A. No.

Q. Now, in answer to one of Mr. Stanley's questions, Mr. Stanley asked you whether you had an agreement before the M.E.S.A. came in with reference
 336 to steady work. You meant by that that there was a plant agreement, or did you mean by that they simply had steady work in the plant before the M.E.S.A. came in?

A. The way I can answer that is the reason I had steady employment before was because I was on a salary basis.

Q. Had there been an agreement between the company and all the men with respect to steady work before the M.E.S.A. came in?

Testimony of Stanley Linski

A. Just the men that was on salary; there was agreement.

Q. Was there any union in there before the M.S.A.?

A. No.

Mr. Witt: That is all.

RE-CROSS EXAMINATION

Q. (By Mr. Stanley). Each year there have been periods with the Sands Company when there has been a slack in work; has there not?

A. Yes, sir.

Q. And the year 1934 was an unusual year because it had this government order at that time; wasn't it?

A. Yes, sir.

Q. That was the only Government order it ever had?

A. No; I think that was the fourth one that was there.

Q. But if it didn't have a Government order there were periods of unemployment?

A. Yes, sir.

Q. And even in 1934 there was a period of unemployment even though there was a Government order?

A. Yes, sir.

Q. And in the spring of this year or in the winter of this year were you steadily employed or were you off for some period?

A. Well, I can't recollect that, whether we were off the first part of the year or not. I know the big part of last year I worked three days a week, but I can't say.

Q. That is in 1934?

A. 1934. I am not positive on this year.

Mr. Stanley: That is all.

STANLEY LINSKI,

called as a witness by the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Witt). State your name to the reporter?

A. Stanley Linski.

Testimony of Stanley Linski

Q. What is your address?

A. 6807 Fullerton Avenue.

Q. Stanley, are you here in response to a subpoena?

A. Yes, sir.

Q. Have you worked for the Sands Manufacturing Company?

A. Yes, sir; I did.

Q. When did you begin to work for the company, do you remember?

A. Oh, about twelve, thirteen years ago.

Q. Until when did you work for the company?

A. The 31st of August.

388 Q. The 31st of August this year?

A. Yes, sir; the 30th of August.

Q. Are you a member of the M.E.S.A.?

A. Yes, sir.

Q. When did you join the M.E.S.A.?

A. Oh, 1934, the first part of—when they first organized.

Q. Have you had any work since you were laid off?

A. No, sir; no work at all.

Q. Are you about to go to work?

A. I am supposed to go to work for the WPA.

Q. At what rate will that be?

A. Fifty-five dollars a month.

Q. Have you had any relief since you were laid off?

A. Yes, sir.

Q. How much relief did you get in September?

A. Eleven dollars and seventy cents.

Mr. Stanley: How much?

The Witness: Eleven dollars and seventy cents.

Q. (By Mr. Witt). How much have you had since October 1st?

A. October 1st, got fifteen dollars and ten cents for two weeks, net thirty dollars and twenty cents.

Q. Thirty dollars and twenty cents a month?

A. Yes, sir.

Q. Does that mean—

389 Mr. Stanley: May I make a suggestion that as we go along with this that if we are going to stipulate this why should we take the time to—

Mr. Witt: This takes a minute. This gets the complete story. It doesn't take a minute to get it into the record.

Mr. Stanley: We have told you we're going to stipulate with you the loss of time or the wages received and relief received.

Testimony of Stanley Linski

Trial Examiner Danaceau: If that is the case

Mr. Witt: Withdraw the question.

Q. (By Mr. Witt). What was your job at the company, Stanley?

A. Well, I was on the floor until three years ago, there, foreman. First I was called foreman and then called leader.

Q. What department did you work in?

A. The storage department.

Q. As leader, did you have any right to hire anybody?

A. No; I had no right to hire anybody.

Q. Did you have a right to fire anybody?

A. No, sir; the only way I had a right to fire was to report to Mr. Herbie Sands.

Q. Just answer my questions. Were you paid on an hourly basis or a salary basis?

A. Hourly basis.

Q. Had you ever been paid on a salary basis?

A. No, sir.

Q. Did you always work with your men in that department?

A. Yes, sir.

Q. When the M.E.S.A. and the company made an agreement in 1934, did you get a wage increase under that agreement?

A. Ten percent.

Q. When the M.E.S.A. and the company made an agreement—

Mr. Stanley: They have gone over all this. Everybody got an increase.

Mr. Witt: We are not showing—

Trial Examiner Danaceau: Inasmuch as it was agreed by both sides—

Mr. Witt: We want to show that it was given to all so-called foremen.

Trial Examiner Danaceau: Is that agreed? Is that true?

Mr. Stanley: The foremen?

Trial Examiner Danaceau: Let him answer the question if there is any dispute about it.

Mr. Stanley: Is there any question about it?

Mr. Witt: We better go ahead about it.

Q. (By Mr. Witt). When the M.E.S.A. and the company made an agreement this year after the one on June 15th, did you get an increase under that agreement?

Testimony of Stanley Linski

A. Two cent increase.

Mr. Stanley: Now, there isn't any question about that. Everybody got that.

Mr. Witt: We understood you then that you
391 will agree that every one of the foremen got an increase under both these agreements?

Mr. Stanley: No, sir.

Trial Examiner Danaceau: If it is true, we can save a lot of time.

Mr. Stanley: Certainly we know the contract called for a two cent increase.

Trial Examiner Danaceau: The question is whether the foremen were included in it. If that is a fact, let it go into the record and save all these questions.

Mr. Stanley: The foremen were included in those increases.

Trial Examiner Danaceau: I believe we have had practically all the foremen here and they have all testified—

Mr. Witt: We have one or two more.

Mr. Sands: Will you give us a minute's time and I will talk it over with my counsel?

Mr. Witt: May we have a recess?

Trial Examiner Danaceau: Let us have a short recess for about five minutes.

(Recess had.)

(Conversation had off the record.)

STIPULATION

Trial Examiner Danaceau: It is hereby stipulated by and between counsel for both sides that the ten percent raise and the two cents an hour raise
392 made in May, 1934 and in June, 1935 respectively, applied to foremen who were members of the M.E.S.A., and that this stipulation does not by implication mean that any other foremen or other employees did not get such increases. Now, let us proceed.

DIRECT EXAMINATION (Continued).

Q. (By Mr. Witt). Mr. Linski, have you given us the date on which you were laid off by the Sands Manufacturing Company?

A. We was all laid off on the 21st of August.

Testimony of Stanley Linski

Q. You were laid off on the 21st of August; you do any work for the company after that?

A. After that I was called up on the 27th of August.

Q. You were called up?

A. Called up on the phone.

Q. Who called you?

A. I couldn't say whether Garry or Herbie. I called at the store; they notified me.

Q. What day?

A. The 27th of August; went to work on the 28th of August.

Q. When did you begin to work?

A. On Tuesday afternoon.

Q. I think the calendar will show it was the 28th of August. During that period, did you have a conversation with Garry Sands?

A. Yes, sir; I did, on Friday.

Q. Just answer my questions, please, Linski. On what date was that?

A. Friday, August 30th.

Q. Friday, August 30th. What did he say to you on this occasion?

A. Well, he talked—well, we both called—Frank Pansky was called in that day.

Q. Who else was there?

A. Herbie Sands and Garry Sands was there.

Q. No others?

A. No, sir; nobody else.

Q. What happened?

A. Well, Garry Sands—well, he was talking to me about—

Q. He spoke to you and Pansky together?

A. He spoke to us and Pansky about cutting wages; we was making too much money, and he said just a few other things. I just can't remember about everything.

Q. Did he tell you then how much he wanted to cut you?

A. No, not on that day.

Q. Did you get to an agreement on that day?

A. No; we didn't come to an agreement.

Q. Did he ask you to come back?

A. He asked us to come back on Wednesday.

Q. The following Wednesday?

A. On September—

Testimony of Stanley Linski

Q. The calendar will show September 4th; 394 did you come back at that time?

A. I come back and—

Q. Just answer my question. Was anybody with you at that time?

A. No, sir; nobody with us.

Q. Who did you see on that day?

A. I seen Garry Sands and Herbie.

Q. Did you have a conversation with them?

A. Yes, sir; I did.

Q. What did Garry Sands say?

A. Garry Sands asked me if I wanted to work and I told him I did. He said, "If you want to work, you got to join the A. F. of L. Union."

Mr. Stanley: Will you repeat that please?

The Witness: He asked me to join the Federation of American Union.

Q. (By Mr. Witt). Did he ask you to join before you went to work?

A. No; it was on Wednesday.

Q. This was the first time he mentioned the Federation of Labor; what did he say about the Federation of Labor?

A. He asked me to join the Federation of Labor and he would give me work.

Q. What did you say?

A. I said I wouldn't decide until I went to 395 see my wife.

Q. What did he say?

A. He said "Suit yourself. Every man is for himself."

Q. What did you say to him about that then?

A. I said, "I ain't by myself there."

Q. You said you aren't by yourself?

A. No, sir.

Q. You say you were with the other men?

A. I said I was with the other men. He asked me if I was friendly with them. I said I was friendly with nobody.

Q. Did Garry Sands say anything else about the A. F. of L.?

A. Garry said he would give me protection if I worked and joined the Federation.

Q. That he would give you protection or the Federation of Labor would?

A. That he would give me protection. I said I didn't need protection.

Testimony of Stanley Linski

Q. Anything said about wages on this occasion?

A. Not much said about wages there.

Q. Did he make an offer to you of wages?

A. He offered me five days a week.

Q. Did you accept the offer?

A. No, sir; I didn't.

Q. And then did you leave Mr. Garry Sands after this conversation?

A. Yes, sir; I left Mr. Garry Sands.

396 Q. Did you meet anybody?

A. I met the boys; I met Frank Pansky.

Q. Just a minute. Who?

A. I met Frank Pansky.

Q. You met Frank Pansky?

A. Yes.

Q. Did you have a talk with him?

A. Yes.

Q. What did you talk about?

A. Talked about what his agreement was and what was mine.

Q. Did you talk about an agreement or the conversation?

A. About the conversation we had.

Q. Did you meet any other boys?

A. Garms, Farrell, and Jindra.

Q. Any others?

A. And Frank Dolish.

Q. Was Frank Pansky with you when you met these boys?

A. No, sir; I was by myself. No; they came in, Frank Pansky and Lada.

Q. Would you say Frank Pansky and Lada were with the rest of you?

A. They came over to the machine. I met them on the corner.

Q. Did you tell the other boys about your conversation with Garry Sands that morning?

A. After I met them, we talked it over.

397 Q. When you said to Garry Sands that you didn't need protection, did he say anything to you?

A. No, sir; he didn't say nothing.

Mr. Witt: Your witness.

*Testimony of Stanley Linski***CROSS EXAMINATION**

Q. (By Mr. Stanley). Now, when he talked with you first, you had been working three or four days after the layoff?

A. Yes, sir.

Trial Examiner Danaceau: Speak up.

Q. (By Mr. Stanley). Did he talk to you then about steady work, five days a week work; didn't he?

A. Yes, sir.

Q. Through the year?

A. Through the year.

Q. And guaranteed wage for the full year; wasn't it?

A. Yes, sir.

Q. And he discussed with you at what rate you would agree to work if you had steady work there, working every day of the year, didn't he?

A. He didn't give us a price though.

Q. I know. I understand that. But he discussed with you the work the full year at some reduced price per hour?

A. Yes, sir.

Q. Yes. And you told him that you would think that over; didn't you?

A. Yes, sir; I did.

398 Q. And you said you wanted to talk to your wife about it?

A. Yes, sir; I did.

Q. And you asked him what if pickets attacked you or beat you up; didn't you, in that first talk?

A. What do you mean?

Q. In that first talk that you talked to him and said that if you went back to work, why pickets might beat you up or go to your home and bother your wife?

A. There might be some; I don't know who.

Q. That is what you talked about? You nodded your head. He has to write that in the book there. That is what you talked about; wasn't it?

Trial Examiner Danaceau: Did you talk about that?

A. No; we didn't talk about that. We discussed about wages.

Q. Well, did you talk about somebody coming to your home and bothering your wife if you worked?

A. Yes, sure; I did.

Q. You did? And you said that before you did that you wanted to talk it over with your wife?

Testimony of Stanley Linski

A. I did.

Q. Now, of course, you understood that if it were steady work throughout the year that there would be fewer men working but everybody would have full time work; didn't you?

A. On what condition?

Q. Well, I know that you and other men were
399 to have full time work and, of course, that would mean that some men would not have any work at all; wouldn't it?

A. Yes, sir.

Q. Because there had been times out there, hard times, that there had been slack seasons of work; that is true, isn't it?

A. That is true.

Q. And you thought that some of the men might object to their not having work and you having full time work; isn't that right?

A. Yes.

Q. That is what you were talking about; somebody bothering your wife at home if you did this; isn't that right?

A. (No answer).

Q. You nod your head; is that yes?

A. Yes, sir.

Q. You said you would think that over, and you did go home and talk it over with your wife; didn't you?

A. Yes, sir.

Q. And you did come back the following week and talk it over with Mr. Sands again?

A. Again, yes.

Q. And you again talked about this question about somebody bothering your wife at home; didn't you?

Mr. Witt: Now, we wish that counsel for the other side would make his questions clearer. In his questions he doesn't say whether this witness said
400 they had bothered his wife or will bother his wife. It is impossible for the witness to understand his question.

Trial Examiner Danaceau: Well, the witness may answer if he remembers.

Mr. Stanley: Just read the question.

(Last question read by the Reporter.)

Trial Examiner Danaceau: I take it this is after he came back.

Testimony of Stanley Linski

Mr. Witt: Well, that is exactly what I mean, the question of somebody bothering your wife at home would mean somebody had bothered your wife or would bother your wife; no reason why that can't be made clear.

Trial Examiner Danaceau: Let him answer the question as read. Do you understand the question?

The Witness: What is that?

Q. (By Mr. Stanley). Well, strike that out and let me make it clear so there won't be any question about it. I don't think there is. You just told us in your first talk with Mr. Sands you said that there might be trouble had, somebody bothering your wife if you did this and you wanted to go home and talk it over with her. You did state that?

A. Yes.

Q. Now, I am asking you after you talked it over with your wife and came back Wednesday, did you also talk at that time with Mr. Sands about the
401 chance that maybe your wife would be bothered at home?

A. I didn't say nothing about that.

Q. Not the second time?

A. I didn't say nothing about the wife the first time; the second time I did.

Q. It was the second time you did. You talked it over with your wife in the meantime?

A. Yes, sir.

Q. And you had a doubt in your mind about taking the chance of working and having your wife bothered at home; is that it, when you came back the second time; is that it?

A. That's right.

Q. And Mr. Sands said to you at that time that if you worked, that there were other A. F. of L. men that would work?

A. Yes, sir.

Q. And they would protect you in that work as well as protect yours; isn't that it?

A. Yes.

Q. That is the talk about the A. F. of L.; isn't that right?

A. Yes, sir.

Q. And you were still doubtful about that? You didn't want to go to work; isn't that right?

A. Yes, sir.

Testimony of Stanley Linski

Q. And that is the reason you didn't want to go to work; isn't it?

402 A. That's not the reason; because the rest of the boys didn't go.

Q. In other words, you wanted everybody to go to work?

A. The rest of the boys.

Q. I beg your pardon?

A. The rest of the boys I wanted to work too.

Mr. Stanley: That is all.

RE-DIRECT EXAMINATION

Q. (By Mr. Witt). Did you during these talks with Mr. Sands ever say to him that your wife had been bothered?

A. No, sir.

Mr. Stanley: Oh, no; I don't so understand his testimony. If you are claiming anything—

Mr. Witt: Then there is no use wasting time on it then.

Q. (By Mr. Witt). In this talk that you had with Garry Sands on September 4th, did he ask you to join the American Federation of Labor?

A. He did.

Mr. Witt: That is all.

Mr. Stanley: I think we might just as well clear up one point with this man too.

RE-CROSS EXAMINATION

Q. (By Mr. Stanley). The time that you were changed from a salary to wages was when the NRA went into effect; wasn't it?

403 A. I had no salary, sir.

Q. Before the NRA you did have?

A. No, sir; I didn't have no salary.

Q. You had been, always been on an hourly basis?

A. Always been on hourly basis.

Mr. Stanley: That is all.

RE-DIRECT EXAMINATION

Q. (By Mr. Witt). Are you a member of the M.E.S.A. now?

A. Yes, sir.

Q. Were you a member of the M.E.S.A. when you worked for the company?

A. Yes, sir.

Testimony of Stanley Linski

Q. When you worked for the company, did you ever do any work in the machine shop?

A. I did.

Q. How often did you work in the machine shop?

A. Oh, quite often.

Q. Quite often. About how many times?

A. About twenty, thirty times in the years I have been working there.

Q. When you worked in the machine shop, how long would you work in the machine shop?

A. Once one week, two weeks, two times, three times.

Q. Did you ever work longer than two weeks?

A. No, sir.

Q. Was there any complaint about your work
404 in the machine shop?

A. Not that I know of.

Q. Did anybody ever tell you that your work in the machine shop was unsatisfactory?

A. No, sir.

Trial Examiner Danaceau: What kind of work was it?

The Witness: Work on the valves in the assembling.

RE-CROSS EXAMINATION

Q. (By Mr. Stanley). Most of that work was not working on machines; was it?

A. Working in the assembly was in the storage department.

Q. When you were working in the machine shop, your work in the machine shop wasn't working on machines?

A. I did; I worked on a drill press.

Q. How long?

A. A few days on there.

Q. Other than that, there wasn't any work you did on the machines?

A. Well, the drill press.

Q. I know, but except this one occurrence with the drill press—of course, that is a machine—but other than that one occurrence, your work up there was not working on machines; was it?

A. Worked all round, worked on every job in that place. Worked on assembling of valves, worked
405 on drill press. You can change around—

Q. Yes, I understand that. You did assem-

Testimony of Stanley Linski

bling of valves, one thing or another. How long ago was that?

A. Worked last year, worked this year on assembling of valves.

Q. When?

A. The first part of January and February.

Q. You worked this summer?

A. This summer, assembling of valves.

Q. In the machine shop?

A. In the machine shop.

Q. There was slack work in your department?

A. Yes.

Q. Shifted up there?

A. Yes, sir.

Q. That was the last part of July?

A. No; worked all year.

Q. Did you work in the machine shop this summer?

A. No; not this summer. Had plenty of work in the storage.

Q. How many men worked under you?

A. In doing right business had thirty, forty, fifteen, ten; depends on kind of work you had.

Q. Let us see exactly. If you wanted to discharge anybody for being incompetent, see if it is done this way. First you went to Mr. Sands?

A. Yes, sir; report to Mr. Herbie Sands.

406 Q. Then it went to a committee, a shop committee; is that right?

A. Well, when we had to go to the shop committee—

Q. You had to go to the shop committee?

A. Yes, sir.

Q. And then the shop committee decided whether the man should be discharged or not; is that right?

A. Yes, sir.

Trial Examiner Danaceau: Are you speaking of an actual case or merely of a hypothetical case?

Mr. Stanley: Let us see if that is the way they did it.

Q. (By Mr. Stanley). Were there any cases like that, if you remember?

A. Well—

Q. Cases that you know about, whether your department or any other department?

A. What do you mean, about firing men?

Q. Yes.

A. We couldn't fire nobody.

Mr. Witt: We will stipulate on this—

Testimony of Stanley Linski

Trial Examiner Danaceau: It is not a question of stipulation; did you have any occasion where you recommended a man for firing?

The Witness: Well, Herbie Sands said if a man doesn't produce his work, notify him.

407 Trial Examiner Danaceau: Did you notify him on some occasion?

The Witness: Just notify him in a few cases when they had a new gang working there.

Trial Examiner Danaceau: When was that?

The Witness: In July.

Trial Examiner Danaceau: This year?

The Witness: Yes, sir.

Q. (By Mr. Stanley). What happened?

A. Well, there was a couple of fellows laid down on the job and I just told him. I told Herbie and he left him go; that is all.

Q. They come up before the committee?

A. Them was new men.

Q. They didn't belong to the M.E.S.A.?

A. They didn't belong to the M.E.S.A.

Q. Did you have any men belonging to the M.E.S.A. that you discharged?

A. No, sir; nobody.

Q. Now you have said that before a man could be discharged, if he belonged to the M.E.S.A. there was a hearing before the committee, the shop committee?

A. That was up to the committee.

Q. That was up to the committee. Did you have any occasions that you heard about or knew about
408 that that happened?

A. No.

Q. But you knew that that was the regular thing that was done in the shop; is that it?

A. Yes, sir.

Mr. Witt: Just one or two questions.

RE-DIRECT EXAMINATION

Q. (By Mr. Witt). You just said a minute ago that you recommended to Herbert Sands that a few of these men who worked under you be discharged; was that within the fifteen day period?

A. I don't know.

Mr. Witt: Withdraw that question.

Q. (By Mr. Witt). Had any of these men worked under you more than fifteen days?

Testimony of Stanley Linski

A. No; only that one worked five or six days.

Q. Just one worked five or six days?

Mr. Witt: That is all.

RE-CROSS EXAMINATION

Q. (By Mr. Stanley). Well, had any of them worked two or three or four weeks?

A. No; I didn't fire nobody just that man. The first day he started he didn't do nothing; he just laid around.

Q. Loafing?

A. He said, "Why should I work for forty cents?"

Q. And they laughed about it just as these gentlemen are laughing about that; isn't that right?

409 Mr. Witt: Just a minute.

A. Yes.

Trial Examiner Danaceau: The question and answer will both go out and I will ask the men in the rear to please refrain from laughing.

Q. (By Mr. Stanley). Well, now, if these men were discharged in July, some of them had worked before the strike; hadn't they?

A. No; these boys didn't work before the strike.

Mr. Stanley: All right. That is all.

Trial Examiner Danaceau: Anything further, Mr. Witt, of the witness?

Mr. Witt: Just one or two questions.

RE-DIRECT EXAMINATION

Q. (By Mr. Witt). You said before that you worked on a drill press in the machine shop. Did you work on the drill press on more than one occasion?

A. Oh, I just drilled on the burners.

Trial Examiner Danaceau: Did you do it more than one time?

Q. (By Mr. Witt). Did you do it more than one time?

A. Oh, yes, I done it a few times I have been up there.

Q. Were there any lathes in the machine shop when you worked in there?

Mr. Stanley: I didn't hear the question.

(Last question read by the Reporter.)

410 A. I don't know how many there were.

Q. There were lathes in the machine shop?

A. There were drill machines.

Testimony of Frank Pansky

Q. Were there any lathes?

A. (No answer).

Trial Examiner Danaceau: Do you know what a lathe is?

The Witness: I don't think I can tell.

Mr. Witt: That is all.

Mr. Stanley: That is all.

(Conversation had off the record.)

FRANK PANSKY,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Witt). Speak up and give the Reporter your name and address?

A. Frank Pansky.

Q. What is your address?

A. 4746 Broadway.

Trial Examiner Danaceau: Let us proceed with the understanding that the respondent will furnish for the record a copy of the two notices.

Mr. Stanley: We can stipulate that.

Trial Examiner Danaceau: Stipulate that for the record.

STIPULATION

Mr. Stanley: It is stipulated that the notice
411 on or about August 21st, 1935, was as follows:

"Notice. The factory will shut down Wednesday night, August 21st, until further notice."

Q. (By Mr. Witt). Have you given your name and address?

A. Yes, sir.

Q. Frank, have you worked for the Sands Manufacturing Company?

A. Yes, sir.

Q. Do you remember when you first went to work for them?

A. Oh, I guess it was in April, 1930 or about there sometime.

Q. If I told you it might have been April, 1931, would I be wrong?

Testimony of Frank Pansky

A. It is about that.

Q. Either '30 or '31?

A. Yes.

Q. Were you laid off this year?

A. Yes, sir.

Q. About when?

A. August 21st.

Q. Were you a member of the M.E.S.A.?

A. Yes, sir.

Q. Were you a member when you were working for the company?

A. Yes, sir.

Q. What work were you doing for the company when you were laid off?

A. Foreman of the sheet metal, or leader of the department.

Q. How long have you been a foreman or leader of the sheet metal department?

A. About two years.

Q. While you worked for the company, did you ever do any work in the machine shop?

A. No, sir.

Q. You never did work there?

A. I did work in the machine shop previous to this, five years I worked there.

Q. Were you off?

A. When I was off, started sometime in 1920. I have been on and off during that time. That is the longest stretch I worked there.

Q. Previous to this last time, you worked in the machine shop?

A. Not in the last five years.

Q. But this previous time, did you work in the machine shop?

A. Yes, sir.

Q. How often did you work in there?

A. I had a steady job in there.

Q. I beg your pardon?

A. I had a steady job in there.

Q. For how long?

413 A. I guess a year, a year and a half.

Q. What did you do in the machine shop?

A. Automatic screw machine.

Q. Any other machines?

A. Hand screw machines.

Q. Any other machines besides that?

Testimony of Frank Pansky

A. Drill press, tappers.

Mr. Stanley: I am just wondering about the relevancy of this. This man didn't work in the machine shop this last summer when this controversy took place.

Mr. Witt: That is not the issue.

Trial Examiner Danaceau: He may answer.

Q. (By Mr. Witt). Do you know whether there are any lathes in the machine shop?

A. Yes, sir.

Q. And a machinist runs the lathe?

A. Yes.

Q. If a machinist runs a lathe, is he called a machinist or a toolmaker?

A. Called a lathe hand.

Q. A lathe hand; is that a special form of work?

A. For lathe specifying.

Q. When you were laid off, were you paid on an hourly basis or salary?

A. Hourly basis.

414 Q. Have you ever been paid on a salary?

A. No, sir.

Q. Were you—did you ever have the right to hire men for the sheet metal department?

A. No, sir.

Q. Did you have any right to fire men?

A. Through reference to the superintendent.

Q. Did you work with your men?

A. Yes, sir.

Q. Have you done any work for the company since you were laid off on August 21st?

A. August 30th.

Q. Did you do any other work for the company besides August 30th?

A. Just that one time.

Q. How did you happen to come to work; did you go to the plant?

A. The company sent a messenger.

Q. The company sent a messenger for you?

A. Yes, sir.

Q. And you went to work that day?

A. Yes, sir.

Q. Did you have a talk with Garry Sands on that day?

A. Yes.

Q. Did he send for you for this talk?

Testimony of Frank Pansky

415 Q. A. Through Herbie Sands.

Q. When you had this talk with Garry Sands, was Herbie Sands there?

A. Yes.

Q. Who else was there?

A. Garry Sands.

Q. Who else?

A. Stan Linski.

Q. Anybody else?

A. Not that I can remember.

Q. What did Garry Sands say?

A. He said the pickup in this factory is too bad, his overhead is too high, that he will have to cut wages. He can't guarantee us boys a year's work if he didn't cut any wages.

Q. What did you say?

A. I said we would have to think it over. He said, "I will give you three or four days to think it over and come back on Wednesday morning."

Q. Did you come back on Wednesday morning?

A. Yes.

Q. Were you alone at that time?

A. Yes, sir.

Q. Did you see Garry Sands?

A. I did.

Q. Was anybody else there at this time?

416 A. Herbie Sands.

Q. Did Garry Sands say anything on this day?

A. I come in and he said, "Good morning." He said, "Frank, I like you. You always did your work satisfactory. If you weren't a good man, you wouldn't be here today."

Q. Did he say anything about wages?

A. Well, he asked me what my wage scale was, hourly rate.

Q. You told him. What is it, by the way?

A. Fifty-two and a fifth.

Q. What else did he say about the wages?

A. "So you are only getting fifty-two and a fifth cents an hour? I won't cut your wages."

Q. Did he say anything about a wage increase?

A. He said he would give me ten percent the first three months and then give me another increase of ten percent the next three months and then five percent the next three months, and during the end of the

Testimony of Frank Pansky

nine months the total increase would be twenty-five percent or seventy-five cents an hour.

Q. In connection with this wage increase, was anything said about the A. F. of L.?

A. I asked him who I would have to kill to get this job. He said, "All you have to do is drop the M.E.S.A. and join the American Federation of Labor."

Q. Did he say that you would have to join the American Federation of Labor in order to get your job there?

Mr. Stanley: I object.

417 Trial Examiner Danaceau: It is a leading question. Ask him what the conversation was.

Q. Now—

A. He did ask me.

Mr. Witt: I will withdraw the question.

Q. (By Mr. Witt). I understood you to say that you had a conversation about the M.E.S.A. and the A. F. of L.?

A. I did.

Q. What did he say about the A. F. of L.?

A. What do you mean? Right after he told me about the wage increase?

Q. Yes.

A. He said I would have to drop the M.E.S.A. and join the A. F. of L. If I didn't join the A. F. of L., I won't get the job.

Q. Did he tell you whether or not he had an agreement with the A. F. of L.?

A. He showed me a signed contract which was dated September 3rd.

Q. Did you see the date at this time?

A. He showed me the date.

Q. Did he give you an opportunity to read the contract?

A. Not very much.

Q. What did you say when he made this suggestion about the A. F. of L.?

A. I asked him if I signed for the American
418 Federation of Labor if he would have all his employees back.

Q. What did he say?

A. He said, "Outside of a few, I don't want any of the old men back." I asked him why he didn't want to take back the old men and he give me a big answer.

Testimony of Frank Pansky

Trial Examiner Danaceau: What did he say?

The Witness: He said too high priced men; can't afford to pay those wages.

Q. (By Mr. Witt). Did he ask you to join the A. F. of L. at this time?

A. Yes.

Mr. Stanley: I object to the question.

Trial Examiner Danaceau: He has already answered the question. Objection is sustained.

Q. (By Mr. Witt). Did you agree to join the A. F. of L.?

A. Under the condition that he take the old men back, and he told me he would take a few of them back. I said, "All right; I will sign."

Q. And did you sign?

A. I told him if I do sign, I wouldn't have the money for the initiation fee, to pay for the Federation of Labor initiation. If he said, "If you sign and go to work this afternoon, you will make enough for the initiation fee."

Q. Did you work that afternoon?

419 A. No.

Trial Examiner Danaceau: The question has not been answered, "Did you sign?"

The Witness: Yes.

Q. (By Mr. Witt). Did you work that afternoon?

A. No.

Q. What did you do after you left Garry Sands' office that day?

A. Why, I met Lada Jindra and I talked it over about what is going on in the shop. I said, "Do you think I will get a job back in there?" "Not the way Garry Sands is talking. He only wants a few of the men back; one is Stanley and Peewee Dolish—" pardon the nickname—"only a few that I know of, according to his reference, that he wanted back."

Q. Before you left Garry Sands, did he say anything about the contract with the M.E.S.A.?

A. He said the contract was no good with the M.E. S.A. He said, "We don't know how to draw up a contract." He showed me a contract with the American Federation of Labor and he said, "This is what I call a contract. It protects me."

Q. You said a minute ago that you met Jindra; is that what you said?

A. Yes.

Testimony of Frank Pansky

Q. Wat did you do with Jindra?

A. Went down to see Harry Potter.

420 Q. What did you tell Potter?

A. I told him some conversation I had with Mr. Sands, and I asked Potter's advice what I should do.

Q. You answered the question. When Garry Sands said to you on this Wednesday that the M.E.S.A. contract was no good, did you say anything about that?

A. I asked him why it was no good.

Q. What did he say?

A. He said it was not signed by Harry Potter.

Q. Did you say anything in response to that?

A. I said, "It is funny that you were satisfied with the contract up to now and now it isn't good."

Mr. Witt: You may have the witness.

CROSS EXAMINATION

Q. (By Mr. Stanley). You are also a member of the shop committee?

A. Yes, sir.

Q. When did you go on the shop committee?

A. Sometime in May.

Q. Of this year?

A. Yes.

Q. Whose place did you take?

A. Lada Jindra's.

Q. Now, the first thing that happened in the shop committee was the negotiation before the strike; wasn't it?

A. They was on a strike then already.

421 Q. You went on during the strike?

A. Yes, sir.

Q. Were you there during the negotiations for the settlement of the strike?

A. Yes.

Q. You came to an agreement on the increase in wage of two cents an hour for the old employees; didn't you?

A. Yes.

Q. And then you discussed letting some men go that the company claimed were inefficient?

A. Yes.

Q. And they named the men; didn't they?

A. I am pretty sure they did.

Q. And was that discussed with the Conciliator too,

Testimony of Frank Pansky

A. Yes.

Trial Examiner Danaceau: Speak up.

The Witness: Yes.

Q. (By Mr. Stanley). And you reached an agreement; didn't you?

A. Part of an agreement.

Q. Well, what part didn't you reach?

A. We agreed on the agreement of two cents an hour; that was mostly what we went for, was more money.

Q. I know. What else was agreed upon?

422 A. You have any reference to what you mean? Well, the contract was drawn up there, four or five clauses changed.

Q. I mean at this point where the contract was drawn up. I am at the—

A. You are at the point where the Conciliator is in the meeting.

Q. You didn't draw that contract up?

A. No. We had a verbal contract.

Q. That is what I am talking about. What wasn't agreed upon that you have been talking about? You say part was agreed and part not?

A. Part of the five cents raise was not granted.

Q. You didn't agree on two?

A. We didn't agree on two.

Q. At that time you didn't?

A. We had to take it back to the men to see if they would accept it.

Q. I mean as far as the committee was concerned?

A. We are just mouthpieces of the men.

Q. As far as the committee was concerned, you did agree?

A. We agreed to the terms.

Q. This was on Friday or Saturday?

A. I am pretty sure it was on Saturday.

Q. Did you have a meeting of the men?

423 A. Yes.

Q. Put it up to them?

A. Yes.

Q. They approved it?

A. The rest, yes.

Q. What things were not agreed upon in that?

A. Well, some men refused to take the two cents and wanted to hold out for the five cents; either get the five cents or nothing.

Q. They finally voted to accept?

Testimony of Frank Pansky

A. The majority.

Q. What was the next things that were not agreed upon? You had some article that was not agreed upon?

A. About the seven men that Garry didn't want.

Q. What at that time was said about that?

A. Well, they said the men—I don't know exactly the words he used. Evidently he meant they weren't efficient.

Q. When they broke up, what was the result of it?

A. What do you mean we broke up?

Q. When the meeting closed up before the Conciliator, what was the result of your talk?

A. That Garry Sands take those seven men back; the factory should resume operations Monday.

Q. The men should come back to work?

A. To work.

424 Q. And Sands agreed to that?

A. Yes.

Q. Nothing else except those seven men?

A. That was the only topic.

Q. And he agreed that all those seven men should come back?

A. Yes.

Q. And you were to draw up a contract?

A. Not I, but the committee in general.

Q. And you came back Monday?

A. And we come back Monday, yes.

Q. Nothing was to happen to any of these seven men?

A. The men were to go to work.

Q. Nothing was to happen, no trial or anything?

A. No.

Q. And then on Monday morning, did those men come back?

A. Well, they made it; they weren't notified to come back.

Q. Well, who were notified?

A. They evidently sent out cards.

Q. Well, did they?

A. I don't know if they did or not. I presume they did, because most of the men were back except the seven.

Q. You don't know whether any cards were sent out?

A. I didn't get any. I didn't need it.

Q. Those men didn't come back on Monday; did they?

Testimony of Frank Pansky

A. No.

Q. When did they come back?

425 A. Tuesday afternoon, when they got us Tuesday.

Q. The men?

A. Yes.

Q. These men complained they hadn't been taken back; is that right?

A. Yes.

Q. What did you say?

A. We told them they was supposed to be taken back.

Q. You told them, didn't you, to see Mr. Potter about it?

A. Not me.

Q. The committee didn't?

A. I wasn't there. I didn't refer the men to Mr. Potter.

Q. Who did?

A. If I am not mistaken, I think it was Tony Moraco.

Q. Did you call up Potter?

A. No.

Q. Now this was Tuesday afternoon?

A. Yes.

Q. The men had worked Monday and Tuesday?

A. Yes.

Q. And the men were sent to Mr. Potter?

A. I presume so.

Q. And then the men came back?

A. Yes.

426 Q. And said that they didn't get any definite answer from Mr. Potter; is that right?

A. Yes; I guess that is what they said.

Q. Did you talk to them?

A. No.

Q. And then the next morning—that, of course, you don't know—and then the next morning were the men there again?

A. Yes.

Q. And your committee were on the outside of the shop?

A. Yes.

Q. And told the men not to go into work; is that right?

A. Yes, sir.

Testimony of Frank Pansky

Q. And then the second strike occurred?

A. Yes.

Q. And then after being out a while this contract of June 15th was drawn up?

A. Yes.

Q. And then you had a hearing on this man Jack Norman; didn't you?

A. After we was in work?

Q. Yes.

A. Yes.

Q. The agreement at the time of the contract of June 17th was signed, it was that these men would come back but there would be a hearing before the shop committee?

A. Right.

427 Q. That's right. And Norman was let go; is that right?

A. Through the hearing of the committee.

Q. Through the hearing of the committee?

A. But the other six were retained.

Q. I beg your pardon?

A. But the other six were retained.

Q. Well, I am getting to that.

A. Oh, I beg your pardon.

Q. Then Norman had worked then how long?

A. Oh, just about two weeks.

Q. Was there a hearing on Siminuek?

A. On Siminuek?

Q. Yes.

A. Yes.

Q. And the committee decided what; that he should be retained?

A. Well, the management could not produce any damaging evidence.

Q. I am not asking you that.

A. I am answering.

Q. What did the committee decide?

A. That he be retained. The committee didn't decide that.

Q. Who did?

A. The management.

Q. You had a hearing?

428 A. Yes; the management.

Q. The management was claiming that he was inefficient?

A. Yes.

Testimony of Frank Pansky

Trial Examiner Danaceau: He said the management was to retain him.

Q. (By Mr. Stanley). After that hearing the committee didn't act, but the management said they would withdraw the claim?

A. I don't understand your question.

Q. The management before the hearing, several weeks, said that these men were inefficient?

A. Seven, not one?

Q. This man among others?

A. Yes.

Q. And then there was a hearing on that?

A. Yes.

Q. And after the hearing was over, you said that the management said they would withdraw their claim is that what you meant?

A. Yes.

Q. How about the other five?

A. Well, that included the other five.

Q. All of them?

A. Yes, all except that one.

Q. Were there hearings on the other five?

429 A. That they be present. It was a general hearing.

Trial Examiner Danaceau: You say it was one hearing for all five?

The Witness: One hearing for all those concerned.

Q. (By Mr. Stanley). Those six?

A. That six or whatever it was.

Q. And these men continued to work there?

A. Yes.

Q. And then I am only going over briefly on this but it may lead to other things, and then you took up about that that same time the question of a layoff in certain departments that were slack; didn't you?

A. Yes.

Mr. Witt: Now, we wish that he would make the questions clearer in time. There are all kinds of meetings.

Q. (By Mr. Stanley). When did you take that up?

Trial Examiner Danaceau: With whom?

Q. (By Mr. Stanley). With the committee and the management?

A. Take what up?

Q. The question of the necessity of layoffs in certain departments because of slack work?

Testimony of Frank Pansky

A. We did.

Q. You had several meetings on that as Mr. Witt has said; is that right?

A. Well, yes.

430 Q. How many?

A. Every time there was a layoff.

Q. Before the layoff?

A. Before the layoff.

Trial Examiner Danaceau: You want to continue for a while? It is after twelve.

Mr. Stanley: Oh, I didn't notice that.

Trial Examiner Danaceau: Well, then, we will recess for the noon period.

(Thereupon, at 12:10 p. m. a recess was taken until 1:30 o'clock p. m.)

AFTER RECESS

(The hearing was resumed at 1:30 o'clock p. m., pursuant to the taking of recess.)

Mr. Stanley: With reference to the suggestion of a stipulation as to the sign or notice about July 30th, we are unable to obtain any corroboration of the exact wording, but we will offer no evidence that this notice was put on the time clock, that all men with numbers higher than thirty-one will be laid off Tuesday, July 30th, and the balance Friday, August 2nd; that is the exact wording.

Mr. Witt: You want to offer any evidence?

Trial Examiner Danaceau: You will offer no evidence to contradict?

Mr. Stanley: To contradict.

431 Mr. Witt: Will you offer by witnesses—

Trial Examiner Danaceau: I think the Reporter has that in the record.

Mr. Witt: There is one other thing, and that is that the notice was changed. Will you get in something about that?

Mr. Stanley: We will offer no evidence to deny the fact that the notice was thereafter changed by eliminating the words "and the balance August 2nd."

FRANK PANSKY,

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Testimony of Frank Pansky

CROSS EXAMINATION (Continued).

Q. (By Mr. Stanley). And these conferences in the month of June and July?

A. Which conferences you referring to?

Q. The conferences in regard to layoffs when a department became slack and there was no work in that particular department?

A. Yes, there was supposed to be a layoff.

Q. Those conferences were in June and July; is what I am asking you now?

A. Well, there was conferences in July, subject layoff.

Q. Then there was a conference in June as to laying off of Jack Norman?

A. It was a case of being fired, not laid off.

Q. There was a conference about that?
432 A. Yes.

Q. When I say conference, I mean a conference of the shop committee with the management?

A. Yes.

Q. And there was another conference as to laying off or discharge—rather, of some six other men; is that right?

A. There was a conference during the time that the Conciliator sat there.

Q. But not after the return to work?

A. The management agreed to take them back.

Q. I beg your pardon?

A. The management agreed to take them back.

Q. I am asking you now, after the strike was over and you returned to work, was there a conference between the shop committee and the management as to the six other men?

A. Yes.

Q. Who the management desired to discharge?

A. Yes.

Q. There was?

A. Yes.

Q. When your meeting took place with the management and the Conciliator, there was an agreement that you would draw up a contract and bring it to the management; I believe you said that?

A. Yes, sir.

Q. And that was not drawn up on the morning when the men came back to work?
433 was it?

Testimony of Frank Pansky

A. Not so far.

Q. Then on the following day at least five of these men involved made complaints that they had not been taken back to work; isn't that true?

A. About that time or one or two days after that.

Q. When I asked you on this subject matter—

Mr. Witt: We have gone over this.

Trial Examiner Danaceau: We have gone over this ground before.

Mr. Stanley: Then I am sorry.

Q. (By Mr. Stanley). What was the result of these conferences in regard to laying off because of no work in any one department? What was agreed upon between you and the management?

A. Well, which conference are you referring to?

Q. Well, these conferences in July, I think you said.

A. Subject to the first layoff?

Q. Yes, prior to the first layoff?

A. Yes.

Q. What did you agree upon?

A. Well, the subject came up of seven or eight men having been laid off in the tank department and we come to no agreement with the management on that for the reason of superiority by seniority rights 434 by departments. So we left it up to the management to talk to these men.

Q. By that you meant that the contract provided for a preference by department in layoff and re-employment; is that right?

A. I wouldn't say preference; I would say seniority rights.

Q. Yes, seniority rights.

A. By departments.

Q. By departments. I am going to leave it to you to tell me what you thought that meant?

A. Well, according to the contract, I understand the contract to read when it means seniority by departments you have newer men laid off than the older men.

Q. In particular departments?

A. No new men.

Q. Not to be shifted from one department to another but each department to be filled up by men who had seniority rights; that is what you thought?

A. Yes.

Testimony of Frank Pansky

Q. What did the matter result in, as far as the tank heater department? Did they lay them off?

A. As Mr. Sands talked to the men, agreed to lay off and resume later.

Q. Were there other departments that became idle because of lack of work?

A. If I am not mistaken, the coil room was
435 slack or short of material.

Q. That was taken up by your committee?

A. At the time of the layoff because the coil room couldn't furnish the tank department with coils for heaters.

Q. How did that determine this conference?

A. Well, the department consisted of mostly older men and transferred to other departments.

Q. So the management took care of them?

A. Yes.

Q. That was at the time when the other departments were busier and needed men?

A. Well, I wouldn't say busier; I would say they was busy but not busier.

Q. At any rate, they could use men; is that what you mean?

A. You could always find room in one or two different departments.

Q. There were some members of your committee who urged the management that even though old men had not been called back in the department, that is former employees in the department, not necessarily old employees?

A. I understand.

Q. Former employees in the department had been let go; they urged that they should not be returned to work if there were men in other departments laid off. those men in the other departments should be
436 brought over; isn't that true?

A. Will you explain that question?

Q. Is my question too involved?

A. Your question is too broad.

Trial Examiner Danaceau: I suggest you withdraw the question.

Mr. Stanley: Withdraw the question.

Q. (By Mr. Stanley). Let us take a specific instance; let us say there was work for the machine shop to do that required more men than either were then in the machine shop—let us say that in the coil

Testimony of Frank Pansky

room there was a scarcity of work and, therefore, a necessity of laying off men in the coil room. Let us say in the machine shop there was some men who had been working at it some time in the machine shop but weren't then working. Now my question is based upon that. Weren't there some members of your committee that told the management that the men from the coil room should not be laid off but should be put over into the machine shop? Do you get my question?

Trial Examiner Danaceau: Do you understand the question?

The Witness: Still it is puzzling the way you are explaining it.

Mr. Stanley (Addressing the Reporter). Suppose you read that slowly to me. I don't know if I can phrase it more simply.

A. Just a minute. Can't I try to comprehend that question? If the machine shop is working full or is it part time?

Q. It is part time full and then there is still some men who had been working in the machine shop and hadn't been called back to work?

A. Are you talking with full capacity work or are you designating the twenty-nine original men?

Q. Well, strike it out altogether.

Trial Examiner Danaceau: Well, the question is withdrawn, Mr. Reporter.

Q. Let us take this situation. After the Government order, there were some new men came to work?

A. Yes.

Q. Let us say the men working for the Government order were thirty-one. They had been called back from time to time during the spring of 1935 and then came the strike and the shop having been shut down for three or four weeks; there were new men called into work. In the first two or three weeks in June, not the first two or three weeks—

A. Shortly, right after the strike there was quite a group.

Q. Yes, quite a group. Now, let us say some of those men worked in the machine shop and the machine shop became a little slack and then came a time when the management wanted to have more men working in the machine shop. Now, let us say that so far as the men working in the machine shop went, that there were still some men out who had worked in the

Testimony of Frank Pansky

438 spring or in the summer of 1935 in the machine shop but weren't then at work. Let us say then that the management found that in the coil room there wasn't the necessity of continuing with the men there; they would have to lay some men off. Now, there came a time that you had a considerable discussion, did you not, with some of your committee and the management, and the committee said that the management should take men from the coil room and put them in the machine shop before some of these newer men in the machine shop were returned to work; that is true, isn't it?

A. Yes, sir.

Q. All right. Now, that was the subject of considerable discussion at several of the meetings; wasn't it?

A. Mostly.

Q. Yes.

Mr. Witt: What was the answer?

Trial Examiner Danaceau: Mostly.

Q. That continued right on to August 21st?

A. You mean the setup you just referred to?

Q. Yes.

A. Yes.

Q. I don't mean by my illustration just the coil room, but men from other departments. The coil room was just an illustration?

A. I understand that.

Q. At first the management agreed to try out
439 this shifting of men from other departments up to the machine shop; didn't they?

A. Previous to the strike, during the slack season.

Q. They did during July try that out; didn't they, apparently?

Trial Examiner Danaceau: In reference to July would be after the second strike.

Q. (By Mr. Stanley). After the second strike?

A. They had most of the new men in there at that time. The old men were back at their old departments.

Q. Oh, they were?

A. Yes, sir.

Q. When did this thing occur about different departments shutting down? I thought that was in the forepart of July?

A. That was brought up afterwards.

Q. After July?

A. After the strike, after the settlement of the strike.

Testimony of Frank Pansky

Q. Yes; I am talking about that.

Trial Examiner Danaceau: How long after the settlement of the strike?

The Witness: Oh, subject to the first layoff some kind of small grievance would come up; there would be a discussion of this and that and, of course, a lot of small things discussed; I don't know anything about it. Straightened it out before we boys knew anything about it.

Q. (By Mr. Stanley). We are just talking
440 about shutting down the departments and switching men; that occurred two or three days after the strike?

A. That occurred when Charlie Rudd's men were laid off.

Q. When was that?

A. Sometime in July.

Q. Then came a time when the whole shop became slack?

A. Yes.

Q. Now I am asking you whether at that time in July or August, if the management didn't try out this thing of shifting men from departments that were slack over to departments that were busy?

A. No; there was no department busy after the general layoff.

Q. Not at all. Didn't there come a time when the management wanted to do considerable work in the machine shop in August?

A. Yes.

Q. That was really quite a bone of contention right before August 21st; wasn't it?

A. Yes.

Q. Well, now, before that time or during that time, didn't the management try out this thing of shifting men over to the machine shop?

A. Prior to the strike?

Q. Well, now, prior to August 21st?

A. Now, prior to May.

Trial Examiner Danaceau: No. The question
441 Mr. Stanley is asking you after the strike and before the layoff in August, during the months of July and August, did the management in those two months try out some idea of transferring men from one department to another?

The Witness: Not while we were busy.

Testimony of Frank Pansky

Trial Examiner Danaceau: Sir?

The Witness: Not while we were busy.

Trial Examiner Danaceau: Did they at any time during those two months?

Q. (By Mr. Stanley). When we were slack?

A. Yes. when we were slack.

Mr. Witt: We want this record straightened out.

Trial Examiner Danaceau: I was going to ask, were there any slack periods during July and August?

The Witness: There was one slack period for one department; that slack at the end of July, slow period during August.

Trial Examiner Danaceau: Were there any slack periods during the months of July and August?

The Witness: Yes.

Mr. Witt: We want to ask in what department. Have Mr. Stanley ask him that.

Mr. Stanley: I am perfectly willing to do that; don't make any difference what departments—

Q. (By Mr. Stanley). What departments were slack or slow?

A. The coil room was slow. The tank assembly was slow. The storage room was slow. The sheet metal was slow. Machine shop was slow and, in fact, all departments were slow.

Q. At various times nearly all departments were slow?

A. When there is a general slump in all departments.

Q. In order to get ready for incoming orders, there came a time from the first part of August when the management said they wanted more work done in the machine shop; didn't they?

A. Yes.

Q. We just talked about that?

A. Yes.

Q. That's right. Now, they had tried out the thing by shifting men over to the machine shop; hadn't they?

A. Yes.

Q. At about that time?

Mr. Witt: We object to that. He didn't wait for an answer to that.

Trial Examiner Danaceau: Well, let the reporter read that.

(Last question and answer read by Reporter.)

Mr. Stanley: I understood him to say yes.

Testimony of Frank Pansky

The Witness: About what time?

Q. (By Mr. Stanley). During July and August.

A. During the slack season?

Q. Yes.

A. Yes.

Q. And then the management reported, didn't
443 they, that the results were very poor in the way
of efficiency?

A. Yes.

Q. And they said they didn't want to continue with
that arrangement?

A. Yes.

Q. They tried it out and were satisfied it would not
work; is that right, in other words?

A. As far as they said so.

Q. And the committee disagreed with them?

A. Yes.

Q. The committee insisted that the shifting be done
from one department to the other?

A. With the original twenty-nine men.

Q. That is to say, if a man—let us say in the coil
department—was one of the original twenty-nine men
and had worked in the coil department and was work-
ing at the time that the coil department shut down
during the slack period and the management wanted
to put on an extra man in the machine shop and it
had a man whom it had let go, say in June, in the
machine shop but he was not one of the original
twenty-nine, and the management wanted to bring that
man back into the machine shop and the committee
said, "No; bring a man from the coil shop to the
machine shop;" wasn't that the controversy, again
using the coil shop as an illustration?

A. Provided these men were not working,
444 the original twenty-nine; wouldn't take any
other men until the original men were brought
back to work.

Q. Read the question over and see if your answer
is not yes?

Trial Examiner Danaceau: I don't think it is nec-
essary. He made it clear.

Q. (By Mr. Stanley). That was the subject of how
many different conferences with the management and
the committee?

A. It is hard to say.

Q. There were many; weren't there?

Testimony of Frank Pansky

A. It was generally brought up.

Q. During how many different meetings would you say?

A. I never kept exact count.

Q. But from your recollection?

A. I might say fifty; I might say ten.

Trial Examiner Danaceau: Well, about how many?

The Witness: Oh, I might say five or six; I might say close to that.

Q. (By Mr. Stanley). They finally broke on that very thing on the morning of August 21st?

A. I beg your pardon. What do you mean "broke"?

Q. I mean to say disagreed on this morning, the day of August 21st, the management and the committee?

A. Disagreed? On what?

Q. The management said it would not do it?

445 A. They would not put old men back in the machine shop; is that what you are referring to?

Q. I don't want to go all over it again.

A. I don't know what you mean,

Q. That was the controversy that was at a meeting on this morning of August 21st; wasn't it?

A. There was no meeting on August 21st.

Q. Well, then, the 20th, whatever meeting was the last meeting of the union before they shut down?

A. Some more additional men would be laid off. The highest priced men be laid off and the lowest priced bracket men be kept in there; we wouldn't agree to that.

Q. Let us get this right. If a man working in another department—were there any men in the coil room, head men or foremen, they get eighty cents an hour?

A. Yes.

Q. Let us take a man getting eighty cents an hour in the coil room. Now, suppose there was no work in the coil room at that time, but over here in the machine shop there was some operations that were paid fifty-five cents an hour, for an illustration?

A. Go ahead. I am following you.

Q. Try and see if I get what you mean. And there was a man who had worked in the machine shop before that time but had been laid off because of slackness of work who hadn't been called back to the machine shop. Now, the coil room is about to shut down,

Testimony of Frank Pansky

and the management said, "We want to call
446 back this man who has been in the machine shop
to do this operation which pays fifty-five cents."

The committee said, "Here is an old man who received
eighty cents in the coil room; he should go over here
in the machine shop." Was that the controversy be-
tween the two?

A. Similar to that.

Q. When you say higher priced men, that is what
you meant; isn't it?

A. That is what you class it, the twenty-nine men
are higher classed men than the newer men.

Trial Examiner Danaceau: I think the witness is
confused because of bringing in hypothetical questions
with actual happenings in the plant. Now may I sug-
gest that you inquire of him what was the actual
happening at the plant?

Mr. Witt: That objection is true to this entire line
of questioning. It is a mixture of hypothetical ques-
tions.

Mr. Stanley: I really thought I was going at it in
a way that he would understand.

Trial Examiner Danaceau: You asked one question
and then the next question would be was there a con-
troversy about that and there may be a difference.

(Further conversation had off record.)

Trial Examiner Danaceau: Let me put the question
this way. Can you think of the exact situation and give
us the department and if you can the names and the
prices paid for the work and then that will be
447 the exact thing that you were in dispute about.

The Witness: According to the management's
viewpoint, why should he stick eighty-six cents an hour
men on the job when he formerly only paid forty cents
for new men.

Mr. Stanley: Then I think my illustration was right.
I am perfectly willing to put it the way that the Ex-
aminer suggests, but I don't see the use of doing it.

Trial Examiner Danaceau: The Court will strike out
the comment of Counsel.

(Conversation had off the record.)

Q. (By Mr. Stanley). These same six meetings
that you are talking about, the talk was largely about
the machine shop; wasn't it?

A. I wouldn't say largely but general reference to it.

Testimony of Frank Pansky

Q. Now, the machine shop, the machine shop is a sort of a neck of the bottle of that business out there?

A. Well, it is the first department to start up and the rest of the departments follow.

Q. The machine shop has to be going for quite a bit before the other departments follow?

A. To manufacture raw materials.

Q. And at that time the management said that they wanted to build up some stock, starting in with the machine shop?

Mr. Witt: At what time, Mr. Stanley? Let us
448 have that clear in the record.

Q. (By Mr. Stanley). Along about the first of August, would you say that was so; and if not, tell what date?

A. The stock was being worked previous to that time.

Q. About what time?

A. Two weeks before that.

Q. Let us start in the middle of July. The management said they wanted to build up some stock so that when orders came in, the other departments would follow in line with that stock; isn't that right?

A. The management didn't say they wanted to build stock.

Q. Well, the management said they wanted to start up the machine shop at any rate?

A. Yes. What is your classification of stock?

Q. I beg your pardon?

A. What is your classification as stock?

Q. Maybe I am wrong in using the word "stock." They wanted the machine shop to do certain operations because when other departments came in they could do certain operations. I see what you mean. They couldn't build up stock alone. Now we understand each other so far.

A. Please refer to raw stock or finished stock.

Q. Well, what do you call the machine shop; what kind of stock does it turn out?

A. Well, it is parts. That is not a finished
449 product, and a finished product is a finished heater, classified as stock.

Q. In other words, parts have to be assembled; is that what you call it?

A. Yes.

Q. So the management wanted to start up with the machine shop and just about that time some of these

Testimony of Frank Pansky

other departments became slack; that is true, isn't it?

A. Yes.

Q. And in that situation the management called a meeting of the committee and said, "Now, there are certain men that were working here before in the machine shop and we want to call them back to work." That was the position of the management; wasn't it?

A. Yes.

Q. The position of the committee was, "There are some men, members of the old twenty-nine, who are either out of work or about to go out of work because of slackness in other departments in which they worked, and we want them moved over into the machine shop in preference to calling back those men who formerly worked in the machine shop but were newer men." Am I stating what happened?

A. Yes.

Q. That was the issue; wasn't it?

A. Yes.

Q. Now if that man who was in the other department was making eighty cents an hour and the operation in the machine shop, let us say, fifty-five cents an hour; would that be about right, or do you want to change those figures?

Trial Examiner Danaceau: If he knows. Do you know what they paid?

The Witness: I don't know what they pay their men that work in the machine shop.

Q. (By Mr. Stanley). Well, you mentioned some time ago about a high priced man being shifted over. All I am asking you is this, if by that statement you meant this, that if a man were paid a higher price in another department and moved into the machine shop where the operation ordinarily paid a lesser hourly rate; you mean by that that the committee said that the man moved over into the machine shop should get his old and higher pay?

A. There was nothing discussed about that.

Q. Tell us what did you mean by the higher priced man?

A. Well, the way Mr. Sands always referred to it, when the department is slow and shifted a different department, why can't we hire younger men to put into there when older men are paid sixty, sixty-five and seventy cents an hour?

Q. That was one of the controversies?

Testimony of Frank Pansky

A. Oh, about putting new men into the machine shop; we had no objections to that unless the other twenty-nine men worked.

Q. I understand—

451 Trial Examiner Danaceau: We have heard enough of that, Mr. Stanley.

Mr. Stanley: All right.

Q. (By Mr. Stanley). What was the last meeting of the committee with the management before the notice of August 21st?

A. The last meeting?

Q. Yes.

A. I think the last meeting was on a Tuesday.

Q. That doesn't tell me anything. When was August 21st?

Mr. Witt: August 21st was a Wednesday.

Q. (By Mr. Stanley). All right. That would be the 20th.

A. I am pretty sure it was on a Tuesday.

Q. In the morning?

A. I don't remember whether in the morning or afternoon.

Q. Well, at any rate, on that same day a notice went up?

A. No; the notice went up on a Wednesday.

Q. Went up on the next day. Very well. Can you tell us what the substance of that conference was the morning of that last week?

Trial Examiner Danaceau: Of that day?

Q. (By Mr. Stanley). Yes, of that day?

A. Well, we were called into the office and the general routine went through; too high upkeep, too much overhead expenses; and he suggested some of the men be laid off and we agreed to that, but when he said he would sooner lay off higher priced men and

452 keep lower priced men, we said, "You can't do that because your seniority comes in by departments and the older men are the higher priced men. Then he wanted to lay off older men because of higher priced men and we would not stand for that.

Q. Then what?

A. We said we would go back to the men and find out what they wanted to do about it. He made a statement—I wouldn't say a statement—I don't know how to explain it, but he made a clause that if we can't lay off higher priced bracket men maybe we will shut down

Testimony of Frank Pansky

the factory for a week or two until some work comes in, some orders comes in. Take it back to the men, be laid off or shut the factory altogether, so we took it back to the men.

Q. You took it back to the men. Then you came back to the management, and what did you tell the management?

A. Yes; we told them that the men decided that the older priced men being off, it was not fair to them to be off with the lower priced men working.

Q. He shut it down for a couple of weeks?

A. He could shut down for a couple of weeks if he preferred it, but he couldn't lay off the old men first.

Mr. Witt: You asked him a question there about shutting it down.

Mr. Stanley: It may be cut out.

453 Q. (By Mr. Stanley). Then what did Mr. Sands say?

A. Shut it down; put a notice on the clock and shut it down Wednesday.

Q. And that was what you had been instructed to do by the men with whom you had talked out at the shop?

A. That was the men's choice.

Q. Now, then, the notice was put up and there was a shutdown and you did a little work in the period after August 21st; didn't you?

A. I did.

Q. These jobs that were done in a week or ten days following the shutdown were special jobs that were going out to customers; weren't they, largely?

A. It was a special drum.

Q. What?

Trial Examiner Danaceau: A special drum.

Q. (By Mr. Stanley). A special drum. I mean there were things of that sort where there were immediate orders for special things?

A. I don't know whether it was immediate orders. I was called in to make a special drum. I don't know whether it was.

Q. It wasn't regular stock work?

A. I don't know whether it was regular stock work. I was called in to make a special drum. Whether it was a special order, I don't know.

Q. Other men were called in about that time; 454 weren't they?

Testimony of Frank Pansky

A. Well, I don't know; a few.

Q. You worked two or three days on making this drum?

A. One day.

Q. One day. Was that the week following the shutdown?

A. On August 30th; the shutdown was on the 21st.

Q. That would be the week following?

A. A week or ten days.

Q. At that time you had a talk with Mr. Sands?

A. I did.

Q. And you related—I don't intend to go over all that, but I just want to ask one or two questions about that. You have related in your previous examination this talk in which you told him how much you got an hour and his suggestion was that if you came back to work he would increase you so much in so many months and so forth and so forth?

A. Yes.

Q. And then you said that you would consider that then and let him know Wednesday; am I right on that?

A. That was said on Wednesday.

Q. That you would let him know later?

A. On August 30th I told him and seen him on September 4th.

Q. I think we understand each other. At any rate he talked it over with you and then you came back on September 4th?

455 A. Right.

Q. And hadn't given him an answer until September 4th; that is right, isn't it?

A. Yes.

Q. Now in that first talk, if that was August 30th—

Mr. Witt: If I may interrupt, Mr. Stanley, this talk of the present increase came at a later date; you are repeating his testimony incorrectly.

Trial Examiner Danaceau: I take it that this is about the conversation that the witness had with Mr. Sands?

Mr. Stanley: He had two conversations, Mr. Examiner.

Trial Examiner Danaceau: One he stated was on the day he worked, and then he was told to come back the following Wednesday, the Wednesday being September 4th. The question is what was that talk the following Wednesday?

Testimony of Frank Pansky

Q. (By Mr. Stanley). Well, I can make it clearer. On the following Wednesday, when he came back the following Wednesday, the shop was at work?

A. No.

Q. There were some men working there?

A. I don't know.

Q. Would you say they weren't working?

A. Some men were working there right along.

Q. I see.

A. But it was not, as far as I knew. Mr. 456 Garry said it was not running full. He said there are some men working.

Q. Some men working; that is all I want to get out.

(Conversation had off the record.)

Q. (By Mr. Stanley). When he discussed with you on September 4th, that was the second day after Labor Day; wasn't it?

A. I am pretty sure it was.

Q. That is a Wednesday and on that day when he discussed that with you he showed you this contract with the A. F. of L. Local?

A. He said it was a contract with the American Federation of Labor.

Q. You said you looked it over but not in full?

A. I just glanced at it.

Q. Now, there had been no talk the preceding week, nothing about the A. F. of L., of course?

A. No.

Q. He only talked to you the first time about the A. F. of L., which was on this Wednesday when you came in to give him an answer; is that right?

A. Yes.

Q. And he showed you this contract?

A. I presume that is the contract.

Trial Examiner Danaceau: He already testified to that.

Q. (By Mr. Stanley). You said you would work?

A. I beg your pardon?

Q. You said you would work at that time, 457 didn't you, would go to work under this arrangement?

A. You mean after the conversation was over with Garry Sands?

Q. Yes.

A. After I signed?

Q. Yes.

Testimony of Frank Pansky

A. Yes.

Q. And then you went out and talked to some of the M.E.S.A. men; didn't you testify that you met some men outside?

A. I did.

Q. And then did you talk with Mr. Potter?

A. I did.

Q. And Potter told you not to do it; is that right? I mean in substance.

A. He didn't say not to do it. I don't think he gave me any answer.

Q. At any rate, after talking with Potter, you decided not to do it; yes or no?

A. No.

Q. You decided you would not do it?

A. Yes.

Q. Now the talk between you and Mr. Sands was for steady employment; wasn't it?

A. It was.

Q. Instead of having too many men working in the factory and many of them working only part time, he suggested to you fewer employees working full
458 time; wasn't that it?

A. No, sir.

Q. Well, as far as you were concerned, you would have work full time?

A. Me alone, yes.

Q. And that would necessarily mean fewer employees if that policy were carried out; wouldn't it?

A. I don't know.

Mr. Witt: I object.

Trial Examiner Danaceau: Just a minute. The objection is sustained. It is a conclusion which you can draw from the evidence.

Q. (By Mr. Stanley). How much of a guarantee—how many weeks work did he say he would guarantee you under that arrangement?

A. He said he would guarantee me a year's work.

Q. Five days a week?

A. He didn't mention five days. He guaranteed a year's work.

Q. A year's solid work. Did you read this contract? Did he call attention to this clause in the contract with the A. F. of L.: "It is further understood—"

Mr. Witt: He is asking two questions; st, did you read the contract and then—

Testimony of Frank Pansky

Trial Examiner Danaceau: The witness testified he merely glanced at it.

Mr. Stanley: Now, I am asking him whether he read this particular clause I am about to quote.

Trial Examiner Danaceau: Read the question.

459 (Last question read by the Reporter.)

Trial Examiner Danaceau: Proceed.

Mr. Stanley: Strike that out.

Q. (By Mr. Stanley). Did he call attention or did you read this particular clause in that contract; "It is further understood that the employer will in no way or by means dissuade said employees in joining said union but rather to suggest and make it known to the said employees that the employer had no objections to any employees belonging to said union."

A. Not that I remember.

Q. You don't remember that. How many men worked under you, Mr. Pansky?

A. Well, at various times from three to eleven.

Q. And during June and July of this year how many?

A. I would say about five.

Q. You were a foreman all of the time that you were a member of the M.E.S.A.?

A. Yes.

Q. How many of the men working under you were members of the M.E.S.A.?

A. I never asked them.

Q. I know, but I am asking you?

A. Oh, I don't know.

Q. You don't know at all?

460 A. No.

Q. Never attended the meetings of the M.E.S.A.?

A. Yes.

Q. You don't know whether any of those men belonged?

A. Yes; I know one.

Q. Any more than that?

A. Two, three, four—and I don't know whether the other two fellows were or not.

Q. So there were four that you know belonged to the M.E.S.A. and two you now don't recall whether they did; is that it?

A. Yes.

Q. Did you have any occasion during all the time that you belonged to the M.E.S.A. to make a request to discharge any employees in your department?

Testimony of Frank Pansky

A. No.

Q. Did your department shut down during the summer of 1935?

A. What do you mean, shut down, entirely?

Q. Well, put that to you first, yes.

A. No.

Q. Did you reduce your working force there?

A. Yes.

Q. Did any of the men from your department go to any other department?

A. Not that I remember.

Q. And you continued to work yourself?

A. Yes.

461 Q. At all times except when?

A. I had two men with me all the time.

Q. Well, there were some periods when you were working three days a week?

A. There still was two men with me, punch press men.

Mr. Stanley: That is all. May we have a short recess?

Trial Examiner Danaceau: Yes; we will have a short recess.

(Recess had.)

Q. (By Mr. Stanley). When they came around on September 4th, these men working there, Mr. Sands told you that there were nineteen men working along with the A. F. of L.; weren't there?

A. Not that I remember.

Q. Maybe not nineteen?

A. He said there were some working in there.

Q. They belonged to the A. F. of L.?

A. Yes.

Q. And then he told you he had this contract with the A. F. of L.?

A. Yes.

Q. And showed you the contract?

A. Yes.

Mr. Stanley: That is all.

Mr. Witt: This production payroll will show how many men were working altogether that week.

(Conversation had off the record.)

462

RE-DIRECT EXAMINATION

Q. (By Mr. Witt). Now, Mr. Pansky, in answer to some of Mr. Stanley's questions, you said the committee

Testimony of Frank Pansky

discussed with the management the layoff in the tank heater department. Now was that a discussion relative to the last layoff of the men in the tank heater department or was it a discussion with reference to an earlier layoff in that tank heater department?

A. Earlier.

Q. When would that be?

A. About the early part of July.

Q. The early part of July, and during that discussion was it understood that would be a short layoff?

A. Yes.

Q. Do you know how many men were in the tank heater department at this time?

A. I guess there was about nine all told.

Q. How many of those were so-called old men?

A. Two.

Q. Who were they?

A. Charlie Rudd, and I guess his name is Palko.

Q. At this conference, did the management agree to not lay them off?

A. The management agreed to let the two old men work.

Q. At this conference did the committee insist that either or both these men be transferred to another department?

A. No.

Q. All the other men who were working in the tank heater department at this time, had any of them worked in the machine shop before, to your knowledge?

A. I guess there was two of them.

Q. Do you remember their names?

A. Bill Bradley.

Q. William Bradley?

A. I think his name is Simunek.

Q. Simunek. Any others work in the machine shop?

A. Not that I remember.

Q. You told us about four; that is Rudd, Palko, Simunek and Bradley?

A. Yes.

Q. You told us there was nine altogether?

A. About nine.

Q. Had the other five worked in other departments before they worked in the tank heater department?

A. Yes, sir.

Q. Had all the others worked in all other departments before?

Testimony of Frank Pansky

A. They were drafted from other departments to work in the tank heater department.

Q. At this conference, did the committee insist that the seven men, that is with the exception of Rudd and Palko, go back to the other departments from
464 which they were drafted?

A. You mean—

Q. Did the committee take it up with the management to have these men go to the other departments from which they were drafted?

A. Yes.

Q. Do you know what rates of pay Bradley was receiving at that time?

A. The same as a new man, thirty or forty.

Q. Do you know what Simunek was being paid at that time?

A. The same rate.

Q. Do you remember on any occasion, at any meeting after the strike before you were laid off, at any meeting that you were present as a member of the committee, that the committee took the position that any of the old men should go back to the machine shop even though they hadn't theretofore been transferred from the machine shop; is that too much for you?

A. Redraft your question.

Mr. Witt: Withdraw that question.

Q. (By Mr. Witt). Did you tell us that you were a foreman of the sheet metal department?

A. I did.

Q. Before you were laid off—oh, a person by the name of James Mantel worked in your department?

A. No.

Q. Did you know J. Mantel?
465 Yes.

Q. Did he work for the company before you were laid off?

A. Yes.

Q. What work did he do?

A. Office boy, sweeper, truck driver, messenger, as far as I know.

Trial Examiner Danaceau: I would like to follow up the question that you asked and that you withdrew there.

Mr. Witt: Yes.

Testimony of Frank Pansky

Examination by TRIAL EXAMINER DANACEAU.

Q. (By Trial Examiner Danaceau). In reference to this dispute between your shop committee and the management about putting back the original twenty-nine men to work, supposing one of those original twenty-nine men had no experience at all or couldn't do the work in the machine shop; did your committee expect the man to be put in the machine shop?

A. Well, there is various work in the machine shop.

Q. Suppose the only opening they had was to run a machine and the man didn't know how to run the machine?

A. We didn't expect to put him on.

Q. You only expected them to put the men on work they were capable of doing?

A. Yes.

Q. Did you have any talk with the management with reference to any individual cases?

466 A. No.

Q. It never got to any individual cases?

A. Well, not individual cases where one man can't run a machine. The general idea taken that the men were broken in on these machines and then a slack season come, pick out these men that worked on the machines and then put them in the machine shop.

Q. The management ever object to any individual person of these original twenty-nine that you wanted to put back, of their inability to do the work that was required?

A. Not that I remember.

Mr. Witt: That is all.

RE-CROSS EXAMINATION

Q. (By Mr. Stanley). Let us see about this last thing you just told the Examiner. As I understand it, you say that where there is a slack season the man is transferred over to the machine shop, he is then to be transferred and broken in on a machine?

A. He was previously broken in in that department.

Q. I beg your pardon?

A. He was previously broken in in that department. He did work.

Q. When was he to be broken in if he hadn't been broken in?

A. Never came up.

467 Q. Did this man Simunek, did he work in the machine shop?

A. Yes; that is where he was originally put.

Testimony of Frank Pansky

Q. Is he one of the seven men that the management claimed was inefficient?

A. Yes.

Q. Didn't the management tell you that they had tried out this plan of shifting men and found out it was very inefficient?

A. Similar to that.

Q. In substance, that is what they said?

A. Yes.

Q. And you knew that in July and the early part of August they had been trying out that plan?

A. I don't know.

Q. But they said they had?

A. They said they did, but I don't know if they did or not.

Q. And said that they found out that it was an inefficient way?

A. Yes.

RE-DIRECT EXAMINATION

Q. (By Mr. Witt). You just said that the management said that they had tried out this plan and found it didn't work. Do you recall at what conference the management said that?

A. If I am not mistaken, it was the conference with the Conciliator and the conference at the time of Charlie Rudd's first layoff.

Mr. Stanley: That would be when?

468 The Witness: In July.

Mr. Stanley: In July?

Q. (By Mr. Witt). At any time after you came back to work on June 17th, did the committee and the management agree to try this scheme out?

A. They already said that they tried it out and found it inefficient.

Q. But that is not my question now. My question is now, after you came back to work after the strike, did you have a conference with the management at which you and the management agreed that it would be tried out?

A. No.

Q. Do you know how long Simunek had worked in the machine shop?

A. He worked there, I guess, two times.

Trial Examiner Danaceau: About how long?

Q. (By Mr. Witt). How long?

Testimony of Frank Pansky

A. It would be hard to say.

Q. Well, about how long?

A. Well, he worked during the Government order; he worked in the machine shop for about a month or so.

Trial Examiner Danaceau: And the other time?

The Witness: And the other time two or three weeks before he was drafted to the tank heater department.

Q. (By Mr. Witt). Do you know whether
469 Simunek was hired for the machine shop or not?

A. He claimed he was hired for the machine shop.

Mr. Witt: That is all.

Trial Examiner Danaceau: Anything further from this witness?

Mr. Stanley: Just one more question.

RE-CROSS EXAMINATION

Q. (By Mr. Stanley). As I understand, you say that there had been no agreement between you and the management and the committee to try out this plan. Now, did I understand it to be like this, that your committee wanted it done and the management, without your agreement, already tried it out or reported they tried it out?

A. They said they tried it out.

Q. They said they tried it out and they reported that in July as well as in the conference with the Conciliator; is that right?

A. Yes.

Mr. Stanley: That is all.

RE-DIRECT EXAMINATION

Q. (By Mr. Witt). Did the management tell you in July that they had tried it out in July or they tried it out sometime before?

A. There was no specific date when they tried it. They said they merely tried it out and said it
470 didn't work.

Q. Was this at the conference on the tank heater department conference earlier in July?

A. Yes.

Mr. Witt: That is all.

Examination by TRIAL EXAMINER DANACEAU.

Q. (By Trial Examiner Danaceau). May I ask this witness, did you know anything about how the hourly

Testimony of Frank Pansky

wages of the various employees are determined?

A. I don't quite understand your question.

Q. You know how it is that one man receives forty cents an hour and another man fifty cents?

A. The understanding we had was when a new man is hired, he would be hired for forty cents an hour.

Q. Regardless of what department he worked in?

A. Regardless of what department he worked in.

Q. Was there any understanding as to how his hourly wages would be increased?

A. No; that would come under the agreement in the contract.

Q. And it didn't make any difference what department the man worked in. His wage depended upon his length of service?

A. Yes, sir.

Q. That is your understanding on that?

A. Yes.

Q. You aren't familiar with the wage rates?

A. You classify these men transferred from
471 one department to another?

Q. I mean any man.

A. The one man transferred from one department to another, he would have to get that wage scale. There is no wage scale you work under. Automatically the management increases the wage in the department.

Q. It doesn't make any difference what department you work in?

A. No.

Trial Examiner Danaceau: He may be wrong about it.

Mr. Stanley: I think that is not an answer to your question; that is not a full explanation of it.

Q. (By Mr. Stanley). Suppose a man had worked as a foreman and his rate was eighty cents and he went over to another department which paid less, let us say fifty cents, but still he would get the eighty cents; wouldn't he?

A. Yes.

Q. That is what you mean.

Trial Examiner Danaceau: The explanation is that inasmuch as—no matter what he gets in what department he is in, but the length of service counts in the department he is shifted to; it is up to the length of service.

Mr. Stanley: We can clear that up.

Testimony of Frank Pansky

Q. (By Mr. Stanley). Suppose there was some kind of work there that was really unskilled work and there was a considerable bit of that?

472 A. Labor work.

Q. It wouldn't pay to exceed fifty cents; would it?

A. No.

Q. Suppose a man was working in a department where it required a considerable skill and was getting eighty cents. Although he came and worked at a fifty cent job, he would still get eighty cents; is that what you mean?

A. Yes.

Trial Examiner Danaceau: I think this witness is correct in his statement that everybody starts out at some wage regardless of what work he gets.

Mr. Stanley: We will go into that on our side of the case. So in the meantime so you don't get confused, we know—

(Conversation had off the record.)

Q. (By Mr. Witt). At this conference with respect to the tank heater department, did the committee ask that Charlie Rudd be transferred to the machine shop?

A. No.

Q. At this conference or at any other conference, did the committee ever ask that William Brandt be transferred to the machine shop?

A. No.

Q. At this conference or at any other conference, did the committee ever ask that Albert Farrell be transferred to the machine shop?

473 A. No.

Q. At this conference or at any other conference, did the committee ask that Emil Tulow be transferred to the machine shop?

A. No.

Q. At this conference or at any other conference, did the committee ask that Frank Dolish be transferred to the machine shop?

A. No.

Mr. Witt: Mr. Examiner, the rates of pay which will be submitted by the respondent will show what each man was getting.

*Testimony of Elmer Ochs***RE-CROSS EXAMINATION**

Q. (By Mr. Stanley). In answering that series of questions as to what the committee asked, was that that if the particular department which these men worked in would be shut down, that they would go into another department?

A. That was the agreement.

Trial Examiner Danaceau: We have gone into that question. Anything else of this witness?

Mr. Stanley: That is all.

Mr. Witt: No.

ELMER OCHS,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Witt). Give the Reporter your name?

A. Elmer Ochs.

474 Q. What is your address?

A. 13701 Melzer Avenue.

Q. Elmer, have you worked for the Sands Manufacturing Company?

A. Yes.

Q. Do you remember when you first began to work for the company?

A. Oh, about eleven years ago.

Q. About eleven years ago. Have you ever been laid off?

A. Well, I was laid off with the rest of the men.

Q. About when was that, do you remember?

A. The 21st of September or August.

Q. What work were you doing when you were with the company?

A. Run coil machine.

Q. You ran a coil machine. In what department was that?

A. In the coil room.

Q. What was your rate of pay?

A. Sixty-two and a half cents an hour.

Q. Were you called back to work at any time after you were laid off on August 21st?

A. Yes; I was called back on the 5th of September.

Q. On the 5th of September?

A. Yes.

Testimony of Elmer Ochs

Q. Who called you back?

A. Garry Sands.

475 Q. How did he call you back?

A. Telegram.

Q. Did you go in?

A. Yes.

Q. Whom did you speak to when you went in?

A. Garry Sands.

Q. Did you have a conversation with him?

A. Yes, sir.

Q. What did Garry Sands say to you?

A. He says well, he had a proposition to give me, to start with fifty-eight cents an hour, then within three months twenty percent raise; three months after that, five percent raise, and he would give me steady employment.

Q. What did you say to that?

A. Well, it was better than what I had. I couldn't really give him a definite answer and I brought it to the M.E.S.A., so we had a meeting that day.

Q. What did you say to Mr. Sands when he gave you this proposition? You just said that he made you this offer of fifty-eight cents an hour and then he would give you increases. Did you say you would take it?

A. I said I would think it over; if it was all right. I would come in Monday morning and work.

Q. What else did he say?

476 A. Well, he told me I was going to take charge of the coil room and the tank heater department.

Q. Did you leave after this conversation?

A. What?

Q. Did you leave after this conversation?

A. Yes, sir.

Q. Did you ever go back again?

A. No, sir.

Q. Did you on or about this day or the same week attend a meeting of the M.E.S.A.?

A. Yes, sir.

Q. Where was that meeting held?

A. On Euclid Avenue.

Q. Did you picket the plant thereafter?

A. Yes.

Q. About how long did you picket?

A. The following day, Thursday, and Friday morning we were out on the picket line.

Testimony of Elmer Ochs

Q. About how long did you picket after that?

A. Oh, off and on; I don't know how long.

Q. While you worked for the company, did you ever work in the machine shop?

A. Yes, sir.

Q. How often had you worked in the machine shop?

A. Well, I didn't work there, not any length of time but now and then I worked there a day
477 or so.

Q. When was the last time you worked in the machine shop, do you remember?

A. Right before we went on the strike.

Q. Was that the last time you worked in the machine shop?

A. Yes.

Q. Did you work in the machine shop after you came back following the strike?

A. No, sir.

Mr. Witt: Your witness.

CROSS EXAMINATION

Q. (By Mr. Stanley). When was the last time you worked in the machine shop? I didn't get that. Was that just before the strike of May?

A. Right before the strike; yes, sir.

Q. Had you been slack in your department then?

A. Right at that time we were.

Q. You were?

A. Yes, sir.

Q. You shifted over while you were slack?

A. Yes, sir.

Q. You worked a day or two?

A. Yes, sir.

Q. Had you ever worked with a lathe or drill press or anything of that sort?

A. Worked on a drill press; yes, sir.

478 Q. How long?

A. A day or two.

Q. That was to help you out during the time of the slack?

A. Yes, sir.

Q. Were you laid off in the summer, this last summer, your department?

A. This last summer?

Q. Yes.

A. Well, we were just when they shut down; weren't laid off before that.

Testimony of Elmer Ochs

Trial Examiner Danaceau: You mean when the entire plant was shut down?

The Witness: Yes.

Q. (By Mr. Stanley). That is the shutdown of August 21st you mean?

A. Yes.

Q. Had you worked all through the summer?

A. Yes.

Q. Except one period when you worked three days a week?

A. Yes, sir.

Q. This talk about your coming back to work was when the shop had started up. It had started up that day, September 5th; hadn't it?

I don't know if it was to start that day or Monday.

Q. I beg your pardon?

A. I don't know if it was to start that day or Monday.

Q. It was working at the time you came over and talked to Mr. Sands?

A. I don't know.

Q. If you come into the office, you don't know whether the shop is working; is that it, the office is so separated from the shop?

A. Yes, sir.

Q. So you don't know whether it was working that day or not?

A. No, sir.

Trial Examiner Danaceau: When you were in the office of Mr. Sands, was there any discussion between you and Mr. Sands with reference to labor unions?

The Witness: No, sir.

(Conversation had off the record.)

Trial Examiner Danaceau: There is a stipulation that the cards being handed to the reporter marked as Board's Exhibit 7-A to 7-F inclusive were sent by the Sands Manufacturing Company to the addresses and received by the addressees at or about the time shown on them.

(Said cards referred to were received in evidence and marked "Board's Exhibits No. 7-A to 7-F inclusive, Witness Ochs.")

(Recess had.)

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

212

38-99



*Testimony of Mike Hudak***MIKE HUDAK,**

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Trial Examiner Danaceau: Will you give the
480 Reporter there your name and address and speak up so that we can hear you? First, your full name and then your address.

The Witness: Mike Hudak, 3656 East 117th Street.

Q. (By Mr. Witt). Now, Mike, have you worked for the Sands Manufacturing Company?

A. Yes, sir.

Q. When did you begin to work for the company, do you remember?

A. I am not sure exactly, 27, 28, March 18.

Q. Are you now laid off?

A. I wasn't laid off. I was sick.

Q. When were you sick?

A. Well, my sickness started on October 12th last year.

Q. Was it sickness or injury?

A. It was hernia injury.

Q. Where were you hurt?

A. Hernia rupture.

Q. Were did it happen?

A. Where I work, in the same factory.

Q. Did you go to the hospital at that time?

A. Not right away.

Q. Did you go to the hospital at any time?

481 A. Afterwards they sent me to the hospital for operation.

Q. Who was it that sent you to the hospital?

A. Mr. Herbie Sands said I would have to go for an operation and later on I get a letter, what you call it, from Columbus, Ohio.

Trial Examiner Danaceau: The Industrial Commission?

The Witness: Yes. Be ready on such and such date be ready for the operation.

Q. (By Mr. Witt). When did you go to the hospital for the operation?

A. Why, June 17th.

Q. 1935?

A. That is this year; yes, sir.

Q. Did you continue to work in the shop from the

Testimony of Mike Hudak

time you were hurt last year until you went to the hospital?

A. I did.

Q. When did you come back from the hospital and go to work?

A. Well, I was eighteen days in the hospital all totaled with the hospital being home; that was six weeks exactly when I went back to work.

Q. About what date was that?

A. That was about to be July 29th.

Q. How long did you work?

A. I worked something like two days and three hours.

Q. What happened then?

482 A. Well, the pains came back on me and I had to go back home.

Q. Did you report to the management?

A. I reported to the, what is called the leader man in the department.

Q. What department did you work in at that time?

A. Storage, what you call it.

Q. Who was the leader?

A. Sparkey they called him.

Mr. Witt: Let the record show that it was Linski.

Trial Examiner Danaceau: Is that correct, Linski is Sparkey?

The Witness: Yes.

Q. (By Mr. Witt). Did I understand you to say that you reported sick to Sparkey on this day?

A. Yes, sir.

Q. Did you see Garry Sands at any time?

A. How is that?

Q. Did you see Garry Sands at any time after that?

A. Oh, yes; I was sick about four more weeks after that, and then when I felt I could do a little work as Doctor said, I went to go back to see Garry Sands himself. I had conversation with him in the shipping room.

Q. Did you have a conversation with him?

A. I asked him how was everything if I could come back to work.

Q. What did you say, about four weeks after
483 you reported sick?

A. Yes, sir; four weeks after I reported sick.

Mr. Witt: Will you repeat his last answer?

Testimony of Mike Hudak

(Last answer read by the Reporter.)

Trial Examiner Danaceau: May I ask what the purpose of this examination is?

Mr. Witt: We want to get the background; we are coming to it right now, this conversation at the time—

Trial Examiner Danaceau: It has no bearing on the issues here.

Mr. Witt: It certainly has. Read the question.

(Last question and answer read by Reporter.)

Q. (By Mr. Witt). What did he say in response to that?

A. He said that everything is quiet, business was never so bad like it is now, and I says, "How long is it going to be like that," and he said, "No telling. When we need you, we will drop postal card."

Q. Did you receive a card from him?

A. No.

Q. Did you go back to see him after that?

A. Four or five weeks, went to see him again.

Q. What did he say or what did you say to him at that time?

A. I asked him, Mr. Sands, I says, "I notice that there is boys working in the factory." I said, "How is chances for me to come back?" He looked at me and he says, "Did you work here?" I said, "Why

484 Mr. Sands, you know I worked here." He said,

"What work you been working?" I said, "In the machine shop, all over the place." You want to ask a question?

Q. What else did he say to you?

A. He said, "Do you belong to the union?" I said, "Yes, of course, I belong to the union." Well, he said, "I can't do nothing." "You know," he said, "the M.E.S.A. got the case in Columbus court somehow."

Q. Did he say with who in Columbus?

A. I don't remember. For him in court in Columbus somehow. "Can't do anything for you until case is over."

Q. What did you say in response to that?

A. I picked up my hat; had nothing to say any more.

Q. Before you left that day, did he talk to you about the strike?

A. About the strike?

Q. About the strike you had in June?

Testimony of Mike Hudak

A. Why, he asked me if I was out on strike. I said, "Yes, I had to go out with the boys the same as the rest of them."

Q. What did he say when you said that?

A. Well, when I said that—it is hard for me to answer because this is a little twisted.

Trial Examiner Danaceau: It is a little what?

The Witness: It is a little twisted right in there, so I can't say in a row what is happened because when he jump up I got to start the story from there that
45 he jumped up at me if I ever worked there and then he come on if I ever worked there before, and I said yes, and then he said, "You belong to the union," and I said yes. He said, "Did you go out on the strike?" I said, "Yes, I had to go with the boys," and then I turned around and says, "Mr. Sands, but I am your man." And then he jumped up again and he says, "You are my man?" He says, "How do you figure?" Of course, I don't have time to express myself or explain myself. He said, "Did anybody hit you in the head not to belong to a union or not to go out with the rest of the boys?" I said "No."

Q. What else was said at that time?

A. Well, then, I picked up my hat and left.

Q. Are you a member of the M.E.S.A. now?

A. Sir?

Q. Are you a member of the M.E.S.A. now?

A. I have not paid my dues since July.

Q. Have you had any work since July?

A. No, sir.

Q. Were you a member of the M.E.S.A. when you were still working?

A. Oh yes.

Trial Examiner Danaceau: When you talked about a case, did you have reference to a case before the Industrial Commission with reference to your injury?

The Witness: Yes.

486 Mr. Witt: That is not so.

Trial Examiner Danaceau: He mentioned a case in Columbus.

Mr. Witt: That is not important.

Trial Examiner Danaceau: Is there any other case in Columbus outside of that? I mean in reference to the case in Columbus.

Mr. Witt: The truth of the matter is that Mr. Sands was examined about it. He said a case in Columbus.

Testimony of Mike Hudak

Mr. Sands: I didn't say that.

Trial Examiner Danaceau: Let us not have this cross-examination fighting. Let me ask the witness. You said something about a case in Columbus. What did you mean by that?

The Witness: That is what Mr. Sands told me, that the case is in Columbus and he can't do nothing for me until it is settled.

Trial Examiner Danaceau: What case?

The Witness: This M.E.S.A. case.

Mr. Stanley: Did he say M.E.S.A. case?

The Witness: Yes.

Mr. Witt: Did he say before the Industrial Commission or before the Labor Board? Let us get it straight.

The Witness: He said that.

Trial Examiner Danaceau: Did he explain just what case it was?

The Witness: Well, he didn't explain anything else, what case it was, but it must have been the Union case because he didn't mention about my case.

Trial Examiner Danaceau: You understood it to be a union case?

The Witness: It was a union case, absolutely.

Mr. Witt: Your witness.

CROSS EXAMINATION

Q. (By Mr. Stanley). You have been receiving Workingmen's Compensation; haven't you?

A. Sir?

Q. At times you have been receiving Workmen's Compensation?

A. Work—?

Trial Examiner Danaceau: You have been receiving from Columbus some money, haven't you, since you have been injured?

The Witness: Yes, sir; I receive six weeks' payment and just finally the last week ago they sent me a check for another eighty-eight dollars and some cents.

Mr. Stanley: I think that is all. Wait, just one more question.

Q. (By Mr. Stanley). Mr. Sands apparently did not recognize you at first; did he?

A. He didn't.

Q. He didn't.

Trial Examiner Danaceau: Which Mr. Sands was it?

The Witness: Garry Sands.

Testimony of Mike Hudak

488 Q. (By Mr. Stanley). The superintendent is what name?

A. That is Herbie Sands.

RE-DIRECT EXAMINATION

Q. (By Mr. Witt). This was the last time you saw Mr. Garry Sands and he asked you if he was your man?

A. Yes.

Q. Did you see him before that?

A. Yes.

Q. Did he recognize you at that time?

A. He recognized me, talked to me like a man.

Q. Was he excited?

A. No; he was not excited.

Mr. Stanley: He was puzzled?

The Witness: I don't know if he was puzzled.

Trial Examiner Danaceau: The next witness please.

Mr. Lodish: Mr. Examiner, we have one witness who is not an employee; he has very little to say. We would just like to keep the case open for his testimony.

Trial Examiner Danaceau: What is the nature of his testimony?

Mr. Lodish: Well, he talked to some one of the officers; just to relate one conversation. Never worked here.

Trial Examiner Danaceau: With whom was the conversation?

Mr. Lodish: With Garry Sands, over the telephone.

Trial Examiner Danaceau: Over the telephone.

489 Perhaps Mr. Sands can agree to the conversation being held?

Mr. Lodish: Well, he wouldn't be able to for a certain reason; it is just one man. We will try to get him in.

Trial Examiner Danaceau: With the exception of this one man, do you have anything else to offer?

Mr. Lodish: Nothing except subject to the stipulation.

Mr. Stanley: We have to get together some data on those wages and—

Mr. Lodish: And the Canadian business.

Mr. Stanley: —in connection with that Canadian matter.

Mr. Lodish: But so far as any other persons are concerned, we have just this one man who has this one conversation to relate.

Mr. Stanley: In other words, you are telling us that

Transcript of Evidence

you are through and we will proceed on our side. I would like to do that tomorrow so that we can get our witnesses in here.

Trial Examiner Danaceau: It is three thirty. Is that satisfactory instead of proceeding further? We will start on the defense tomorrow or I should say Friday.

Mr. Lodish: Yes, if the other side is not ready.

Trial Examiner Danaceau: We will adjourn then until 9:30 Friday morning.

(Thereupon, at 3:30 o'clock p. m., adjournment was had until 9:30 o'clock a. m., Friday, November 29, 1935.)

FRIDAY, NOVEMBER 29, 1935

(The hearing was resumed at 9:30 o'clock
490 a. m., pursuant to adjournment.)

Trial Examiner Danaceau: There was one witness that you had to offer the other day.

Mr. Witt: He is not here yet and we are not sure whether he will be here, so the other side can go on.

Mr. Smoyer: That is, you rest with the exception of this data on the Canadian matter?

Trial Examiner Danaceau: And this other witness and also some further tabulations that you have to make as to the employees.

Mr. Witt: We rest, except with that stipulation and after this one witness.

(Conversation had off the record.)

Trial Examiner Danaceau: Are you prepared to proceed with the defense? Call your first witness.

Mr. Smoyer: Somewhere along the line, Mr. Examiner, after the Government rests, we want to enter a formal motion for dismissal of complaint, and we don't know where to put it in.

Trial Examiner Danaceau: Will the Reporter enter that formal motion and I will reserve a ruling on that either at the conclusion of the case or in my intermediate report.

Testimony of Hilliard J. Sands

DEFENSE

HILLIARD J. SANDS,

called as a witness for the respondent, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Smoyer). Will you state your
491 name, please?

A. Hilliard J. Sands.

Q. And your address?

A. 3439 Superior Park Drive.

Q. Are you the Mr. Sands otherwise known as Herbie?

A. Yes, sir.

Q. What is your connection with the Sands Manufacturing Company?

A. Superintendent.

Q. How long have you been superintendent?

A. For about three and a half years.

Q. Did you have any previous connection with the Sands Manufacturing Company?

A. Yes, sir.

Q. What was that?

A. I was foreman.

Q. What department?

A. In the storing department.

Q. How long have you worked, Mr. Sands, at the Sands Manufacturing Company?

A. Well, off and on since I was fifteen years old.

Q. In what departments have you worked?

A. Practically every department in the factory.

Q. That covers how many years?

492 A. Thirteen and a half years.

Q. Now, have you had any technical training?

A. Yes.

Q. What was that?

A. Oh, I have had a technical high school education and in college I took business administration, industrial management, and I studied nights on technical matters, technical subjects.

Q. Now what are the products which the Sands Manufacturing Company produces?

A. They produce gas fired and oil fired water heaters, valves, mechanisms pertaining to the industry.

Testimony of Hilliard J. Sands

Q. What are some of the mechanisms which they produce?

A. One item called Lite-O-Stat.

Q. What is that?

A. A Lite-O-Stat is a mechanism to ignite a tank heater from a place distant from the location of the tank heater.

Q. What are some of the other products?

A. Relief valves.

Q. What is a relief valve?

A. A relief valve is a safety mechanism which will prevent any explosion or overheating of a boiler.

Q. What other products?

A. Protecto-stat valve, which is another safety device or product which prevents any unburned gas from entering the room if the pilot is suddenly extinguished.

Q. What else do you make?

493 A. We also make furnace coils which heat water by means of a gas or coal fired house furnace.

Q. Are there any other products you haven't mentioned? Did you mention a thermostat? Did you make those?

A. Yes. The thermostat is a mechanism by which the temperature of the water in the boiler is controlled.

Q. Now you produce those; do you manufacture those?

A. We manufacture them in our plant.

Q. And then are they sold to customers in that form or are they assembled with something else?

A. Well, most of the mechanisms are installed on heaters, but there are smaller products sold as heater parts and so forth.

Q. Now, there has already been stipulated here that among the raw materials which the Sands Manufacturing Company used is a large quantity of brass. In what form do you get the brass which the respondent uses?

A. Well, they are unfinished brass castings.

Q. Unfinished brass castings; and then what, if anything, do you do or do you have to do?

A. Why they are sent to the machine shop where they are machined, fabricated and processed.

Q. After they are fabricated and processed, what happens?

A. They are made up into assemblies and then sent

Testimony of Hilliard J. Sands

up to different departments where they complete them, assembling them into a heater.

494 Q. They are shipped in what form?

A. Shipped as assembled units.

Q. Assembled units. It has also been stipulated that you purchase a large amount of castings. In what form do you get those castings? First, what kind of castings are they?

A. Cast iron and brass.

Q. What form are they when you purchase them?

A. Well, the cast iron castings come in as unfinished raw castings.

Q. What is done to them?

A. They are also machined and processed.

Q. And the next step?

A. Then assembled into units and sent to the different departments where they are again ready to be put onto heaters.

Q. Then there is a quantity of miscellaneous material that it has been stipulated you purchased. Did you have anything to do with the making up of this stipulation with regard to raw materials that are being used by the respondent?

A. You mean making up the actual—

Q. Yes, in classifying that?

A. No.

Q. What are the miscellaneous items that would be classified as miscellaneous material that the respondent uses?

Mr. Witt: I don't think he really can answer 495 that question.

Trial Examiner Danaceau: If he knows.

A. Yes, I do know.

Mr. Witt: If he knows what went into this classification.

Mr. Smoyer: Let us withdraw that and go into the next classification.

Mr. Witt: You already said he didn't—

Q. (By Mr. Smoyer). It is stipulated here about sheet iron; in what form do you buy sheet iron?

A. Full sheets.

Q. What if anything do you do to it?

A. Those full sheets come in, unloaded, put down in the sheet iron department, and some have to be squared up; all have to be sent to the punch press and punched out in proper shape, proper form, and then

Testimony of Hilliard J. Sands

put in forms, made into different drums of the different heaters, outside shells.

Q. How is that done?

A. We have three punch presses. Most of the sheets have to go through at least one of those three punch presses. After that we put them into the stock and when an order comes in, the sheets are taken out of stock and put through a sort of process and then they are spot welded to be put into that shape. After that they are beaded and put into different shapes and then from there taken into the proper departments.

Q. It is stipulated that a large quantity of steel tanks are purchased by the respondent. In what shape are those tanks when they are purchased?

496 A. Those tanks come in almost a finished product, but there is a small amount of work sometimes on every tank, has to be drilled.

Q. And then are they assembled with some other of your products?

A. Then they are assembled into a heater.

Q. Now you use a large quantity of tubing, it has been stipulated forty-four thousand dollars' worth of it. How do you get the tubing?

A. The tubing comes in straight lengths.

Q. Straight lengths. Then what if anything do you do to it in your plant?

A. The tubing is run through what we call the coiling machine on a worm that forms straight tubing into a circular coil and then sent over to the brazing rack where the couplings are attached, and then they are sent through an acid dip to clean them and then sent back to be lacquered.

Q. And finally assembled?

A. And finally assembled into heaters.

Q. Now did you purchase a large quantity of packing material, and just state in what shape or form is that when you get it?

A. Well, the packing material comes in—say that excelsior is brought in in bales, has to be unbaled and taken to the shipping room and put into a bin. It is taken out of a bin and put into different cartons
497 and crates as needed. The crating we call by the name of shoolks that the heaters come in.

Q. Spell that word shoolks?

A. S-h-o-o-l-k-s.

Q. What is a shoolk?

Testimony of Hilliard J. Sands

A. It is a slat, a piece of board. Those shoolks are taken up to the tank heater department and after the heaters are processed, these crates are assembled upon the tank, ready for shipping.

Q. No, outside of the classifications I have mentioned, concerning which you have testified, what other raw materials do you use out there that might be classified as miscellaneous materials?

A. Well, there is wire, nails, strip steel for packing. Of course, there is a small amount of partially machined goods, partially processed.

Q. And there would be paint?

A. Oh, there is paint and lacquer of all different types.

Q. Solder?

A. Solder.

Q. And that material comes to you—

A. In bulk.

Q. In bulk, and then you use it on these products?

A. It is put in stock and taken out of stock as needed.

498 Q. And used in the manufacture of these heaters?

A. Very often partial machining and partial processing has to be done to put it into shape.

Q. These raw materials that we have been talking about are delivered to you how?

A. What is that?

Q. These raw materials are delivered to you how?

A. By truck and rail.

Q. By whose truck?

A. Well, we don't have any truck of our own; all delivered by trucking firm or consignor's truck.

Q. I see. Now, when you ship, what do you ship from out there? Withdraw that question. You ship a finished product out there, do you not?

A. Yes, sir.

Q. And that is crated and boxed?

A. Yes, sir.

Q. You have used the word "processed" a number of times and "fabricate." Will you define what you mean by the term "processed?"

A. Well, if you can imagine a lot of castings coming in at one location in the plant—it is unloaded from the truck. It is taken to the proper department by the men. First, it is transferred into our standard tote

Testimony of Hilliard J. Sands

pans and barrels, steel barrels. We don't allow any wooden or cardboard crates in the factory. After 499 it is transferred to the shipping room, it is taken to the shipping room by particular men whose duty it is, and then it is healed until the machine is ready to run this material. Then there is several operations. It is more or less progressive until it is fully machined and then sent over to the assembly bench. We have a small process in the assembly bench and it is taken out of stock by these men and assembled into a complete unit on the bench and from there it is taken from there by the men who is detailed into that work, into the proper department where it is used, from there progressing assembly, from assembly into a heater of ours. From there it is crated and sent down to the shipping room where sometimes it is to be directly put into a truck or car or sometimes held in stock, but the whole operation is what I call the processed operation.

Q. And what do you call fabricating?

A. Well, fabricating, I would call one item during the processing; that is, you take a steel sheet that comes down to assembly, to assemble it or make it into a drum would be to fabricate it.

Q. Your employees out there, with the exception of a couple of watchmen and probably a porter or messenger boy, are all employed in this processing that you have described?

A. Direct labor.

Q. All are employed, possibly with the ex- 500 ception of the shipping men too?

A. Yes, sir.

Q. And you operate no truck or no means of conveyance or transportation whatsoever?

A. No, sir.

Q. And then your goods are crated and boxed at your plant; is that right?

A. That's right.

Q. Then how are they shipped?

A. By a trucking firm that has no connection with our plant, or by railroad company.

Mr. Witt: Will you read that answer?

(Last question and answer read by Reporter.)

Q. (By Mr. Smoyer). Do you have any trucks at all?

A. We have one small half ton truck.

Testimony of Hilliard J. Sands

Q. What is it used for?

A. Well, that truck is not used in what you might call direct labor; that truck is used for servicing. It is used a good deal for the Sands Realty. The porter takes the mail down and brings it back and every—I don't think there is any time at all where it is used to deliver heaters or pick up heaters; very very rarely.

Q. What is the Sands Realty Company.

A. The Sands Realty is a firm partially made up of the officers—I think it is all made up of the officers of the Sands Manufacturing Company, an entirely different organization.

Q. Are you an officer of the Sands Realty Company?

A. No, sir.

Q. What relation do you have to Mr. Garry Sands?

A. Cousin.

Q. It has been now stipulated that your products are divided into four parts, four classifications, tank heaters, storage heaters, instantaneous heaters, and valves and other parts. Will you differentiate between the tank heaters, storage heaters and the instantaneous?

A. A tank heater is a small gas fired water heater, which is sold not as a unit with the boiler, but is sold to the consumer to be installed on a boiler. A storage heater is a boiler which has underfire mechanism to heat the water. The instantaneous heater is a unit heater which does not have any storage tank connected with it but heats the water as quickly as the water is drawn.

Q. And those three classifications, plus the valves and other parts, are all of your products?

A. Yes, sir.

Q. What if any knowledge do you have of the early efforts of your employees at that time to organize?

A. Well, it was first told to me by some of the men that they wished to organize and—

Q. When was this?

A. Oh, it was approximately nine or twelve months after the NRA was inaugurated.

Q. Do you know who it was that told you?

A. Well, there was quite a discussion. I don't remember any one man in particular who told me, but I had a conversation with several of the men.

Q. I see.

A. Garry and I went into the office after we found it

Testimony of Hilliard J. Sands

out and we discussed it and we decided that under the NRA ruling that it might be well to give the men the free hand in organizing. We therefore made it known to the men that we would blow the whistle at nine o'clock on a certain morning and that they could go up to the lunchroom at a certain time to organize, and which we did. We blew the whistle and the men went up there to the lunchroom and I don't know what went on there because neither I, nor Garry, nor Joe Sands nor Hamilton were there. No one from the front office was there at the meeting. Later, or after the meeting, they announced they had joined the M.E.S.A.

Q. You referred to Hamilton; who is he?

A. He is our chief engineer.

Q. You mentioned the name of Joe Sands?

A. Yes.

Q. Who is Joe Sands?

A. He is Vice-president of the Sands Manufacturing Company.

Q. There has been some testimony of a differentiation between a foreman and a leader, after you
503 took charge out there. Will you explain that for the record?

A. Well, my definition was a foreman would be more or less of a supervisor and non-productive man. We considered the men on the—the men who are in charge of a certain department as direct labor more or less as most of them had to jump in when necessary to work in with the other men, especially when business is slack we expect them to do as much as an ordinary workman.

Q. I am now handing you what has been marked Respondent's Exhibit No. 3 and, just to cut corners, were you there when that was presented?

A. Yes, sir.

Q. Who presented it?

A. You want the names of the men?

Q. Yes, if you remember.

A. Harry Potter, Lada Jindra, and Charlie Dusek.
I am pretty sure those were the men.

Q. That is a petition for recognition of the committee?

A. Yes, sir.

Q. And after that, there were some demands made by the committee?

A. That's right.

Q. Were you present at those negotiations?

Testimony of Hilliard J. Sands

A. Yes, sir.

Q. Those negotiations resulted in an agree-
504 ment; is that right?

A. Yes, sir.

Q. Do you remember when that agreement was made?

A. No; I don't remember the exact date.

Q. Handing you what has been marked Respondent's Exhibit No. 4, I will ask you if that was the agreement?

A. (No answer.)

Q. That agreement was apparently signed on what date?

A. On May 7th.

Mr. Witt: Wait a minute. He hasn't identified that yet.

A. Yes, sir; that is the agreement.

Q. Now, at the time that agreement was made, Mr. Sands, you had about how many employees?

A. Thirty-one, including the two watchmen.

Q. And that was in May, 1934?

A. Yes, sir.

Q. Now, then, was the plant busy after May, 1934—withdraw that and put it this way. Did the plant work full time?

A. Yes, sir; with the exception of a few weeks in August, if I am not mistaken.

Q. During that period of time, how long did the plant work? How many days per week?

Trial Examiner Danaceau: You mean that period in August?

Q. Yes, August, 1934?

A. Three days a week.

Q. How many weeks were there of three days
505 a week?

A. Oh, about a month.

Q. Now there has been some testimony about the Government order and you remember the bidding for that Government order?

A. Yes, sir.

Q. And when were you negotiating for that order?

A. I think proceedings first started about in May and lasted throughout the summer.

Q. Now, subsequent to May, 1934 and the making of this agreement, were there any meetings as between the company and this committee?

Testimony of Hilliard J. Sands

A. Yes, sir.

Q. How frequently would these meetings take place?

A. Two or three times a week.

Q. Do you remember any meeting in connection with the Government order?

A. Yes, sir.

Q. When was this meeting held?

A. Well, that meeting was held prior to the signing of the contract, the Government contract, by the firm.

Q. Were you present at that meeting?

A. Yes, sir.

Q. Who else was present?

A. Why, one meeting we had the whole factory as a whole in the lunchroom.

Q. And when was that?

506 A. I think that was in September.

Q. 1934?

A. Yes, sir.

Q. Now what was said and by who?

A. Mr. Garry called the meeting and he told the men—

Trial Examiner Danaceau: You mean Mr. Sands, Mr. Garry Sands?

A. Garry Sands called the meeting and he announced to the men that there was an opportunity to receive a Government order and before he signed it he wished to know how they felt about it so far as labor conditions were concerned and working conditions. In other words, he didn't wish to sign a contract which gave a definite period of time in which it had to be shipped and also took a lot of money. He didn't want to accept a contract of that nature unless he was sure of the men would work along with him and didn't make a demand after the signing of the contract.

Trial Examiner Danaceau: Did he say all this?

The Witness: Yes, sir.

Q. (By Mr. Smoyer). Did somebody talk for the men, or what happened after he stated that to the men, if anything?

A. Then there was a committee meeting and then the men gave their acquiescence.

Q. Was there any talk about the number of new men that would have to be hired?

507 A. Yes. Garry Sands very definitely stated that it would be necessary to hire additional men to run the Government order, and he said at

Testimony of Hilliard J. Sands

the time when it was brought up about the discharging of these men and he told the men that these temporary men would be discharged immediately after the completion of the contract.

Q. And was that done?

A. That was done.

Q. How many new men were hired?

Mr. Witt: What does that mean, it was done?

Trial Examiner Danaceau: You mean he discharged the new men after the contract was completed? Is that what you meant by that?

The Witness: Yes.

Q. (By Mr. Smoyer). New men were to be discharged after the completion of the order?

A. Yes; there was a definite understanding.

Q. This agreement of May, 1934 was a sixty-day agreement. Was there any new agreement made during 1934 with the committee?

A. I don't think so.

Trial Examiner Danaceau: Will you clarify that by "any new written agreement."

Q. (By Mr. Smoyer). Any new written agreement?

A. I don't think so.

Q. The men kept on working under the old
508 agreement?

A. That's right.

Q. Now, during the early part of 1935, did you have occasion to hire any additional men from time to time?

A. Yes, sir.

Q. How frequently did that occur?

A. Well, it all depended on business. If we were busy, we would have to take on additional men to get the orders out. When the orders were caught up, we would lay them off.

Q. How would you hire on those occasions?

A. Why we hired more or less the men who had worked there during the Government order.

Q. Now the time—there was nothing heard from this committee then until around May, 1935?

A. I wouldn't say that.

Q. I mean no additional written demands?

A. No, sir.

Q. Were there conferences from time to time between the company and the committee?

A. Continually.

Testimony of Hilliard J. Sands

Q. Continually. How many times would you say?

A. Oh, it would vary from possibly one every two weeks until three or four times a week.

Q. What were the forms or subject matter of these conferences?

Mr. Witt: Has he already stated for the
509 record as to what period he is talking about?

Q. (By Mr. Smoyer). Yes, sir. This is previous to May, 1935?

A. Why there were two subjects that were discussed more than any others, and one was the fact that we wished to lay off certain inefficient men; the other subject was working by departments.

Mr. Witt: Mr. Examiner, we have no wish to object to this line of questioning, but we will object if it takes too long because the questions as to what happened before June 15th give no rise to the issues in this case, because the issues are what happened after June 15th.

Trial Examiner Danaceau: I take it, it is just a basis, leading up to June 15th?

Mr. Witt: I won't object if there will be a hookup.

Trial Examiner Danaceau: We will see.

Q. (By Mr. Smoyer). Do you remember the names of the men whose discharge was talked over?

A. Yes, sir.

Q. Will you name those if you can recall?

A. William Simunek, Jack Ratchford, John Norman, Meyers, Louis Meyers and Henry Schilthorn.

Q. Did you have any personal knowledge of the abilities of these men?

A. Oh yes.

Q. If you will permit me to elect a question,
510 what was your opinion as to their ability and their efficiency?

A. Well, my opinion was that they were inefficient, poor workmen.

Q. Now how frequently was this matter of operating by departments discussed?

A. Well, that was one of the prime questions that were brought up and it was brought up continually, practically at every meeting it was partially discussed.

Q. And why would that question come up so frequently?

A. Well, during the operation of the plant we had found out by trial and from that which way the plant would run best and we had found out that by running by departments it would run most efficiently.

Testimony of Hilliard J. Sands

Q. Let us take the tank heater department for the purpose of illustration. What is done in that department?

A. Well, there are two men who run nailing machines. There is one man who puts on name plates, and another takes the coils from the conveyor, from the coil room, and puts baffle plates into coils. The next man would take this coil and insert it into the heater. The next man to him would tighten the lock and nuts and fasten them into the jacket, then it would be passed on to the next man who would put a burner, mixer, and other parts into the jacket and wire the jacket closed, and another man would drop the heater into the crate and bronze it and at the same time the two craters were busy, one at crating, and the other at the end of the line.

Q. That is what you call progressive assembly?

A. Progressive assembly; each man does his job.

Q. The conveyor system; there is a conveyor system. How many men does that progressive system use to properly run?

A. It normally takes eight men.

Q. There were thirty-one of these original petitioners; is that right?

A. Yes, sir.

Q. And when you have thirty-one men in the plant, how many of them would be tank heater men?

A. Permanently there possibly would be two or three.

Q. And when you only had two or three for that department, how would you work that progressive assembly?

A. We pull men from other departments to work in the department, the tank heater department.

Q. If you hadn't done it that way, was there any other way that you could do it?

A. There would be only two other ways; either allowing those three men to work on all operations or else hire men.

Q. What would you say as to the comparative costs of the three men as compared to the cost of the full amount of men?

A. I would say it was more expensive to run the department with two men or three men than eight men, all efficient men.

Testimony of Hilliard J. Sands

Q. When you pulled men from other departments to work in that line, how would their efficiency
512 compare?

A. They were very inefficient in there by reason that we had a good deal of trouble—in fact, the foreman himself would be quite upset unless he should select the exact men he wished.

Q. Who was the foreman there?

A. Charles Rudd.

Q. Charles Rudd. Did he ever ask for the privilege of selecting the men who worked for him?

A. He always asked the privilege of selecting the men who worked in his department. He would insist on certain men.

Q. Now after these demands were made in May, 1935, was there any conference in connection with the demands between the company and the committee or between the committee and Mr. Potter that you were present at?

A. Yes, sir; I was present at all of those.

Q. You were present at all of those. And was there a conference immediately before the strike?

A. Yes, sir.

Q. Who was present at that conference?

A. The shop committee, Garry Sands, and myself, and Mr. Potter and the Conciliator from Washington, Mr. Rogers.

Q. Was that immediately before the strike?

A. Oh no. That was during the strike. Just before the strike there was the committee, Garry Sands, myself, and Potter was at some of them.

Q. At some of the conferences?

513 A. Yes, sir.

Q. When did that first strike take place?

A. It took place about May 21st.

Q. What was the last meeting or when was the last meeting which you held just prior to that strike?

A. It was on a Tuesday noon; I think it was a Tuesday noon.

Trial Examiner Danaceau: How many days was this before the strike?

The Witness: Well, that was the day they walked out.

Trial Examiner Danaceau: The same day?

The Witness: The same day.

Q. (By Mr. Smoyer). And do you remember how the meeting of—or any conclusion that the meeting came to?

Testimony of Hilliard J. Sands

A. Well, at the meeting they had made certain demands; one of them was a raise in wages and we had talked it over at some length, and Mr. Potter finally accepted a compromise, and at that time it was just about the noon hour and we blew the whistle and the men went up to the lunchroom. Mr. Potter spoke to them. I wasn't present; neither was Garry Sands.

Q. What was the compromise?

A. The compromise was two percent increase.

Q. Two percent or two cents?

A. There you have me. I think it was two percent. I think they asked for five percent.

Trial Examiner Danaceau: The witness is
514 probably mistaken.

Q. (By Mr. Smoyer). It was two cents; wasn't it?

A. Two cents. Well, he come back to the meeting; he come back to Garry and I after he had spoken to the men and he told us that the men had refused to compromise and at that time the men walked out. This was at noon. The men walked out and immediately picketed the plant.

Q. Then the next meeting you had with the committee was—

Trial Examiner Danaceau: Let the witness tell when the next meeting was.

Q. (By Mr. Smoyer). When?

A. Oh, it was shortly afterwards.

Q. Who was present at that meeting?

A. The committee, Garry and I, Mr. Potter was there. There were several meetings; just at that time a Mr. Mathew Smith was at one, as was Conciliator Rogers.

Q. Who is Mathew Smith?

A. I understand he is an official of the M.E.S.A.

Q. Now, coming down to the Rogers meeting, what if any conclusion was arrived at at that meeting by the respondent and the committee?

A. Why practically every point had been covered, and one in particular that I remember about in particular that I remember was the fact that they accepted the compromise at that time. That was two
515 cents an hour. And they also gave us permission to fire five inefficient men, and another thing is there was a little difficulty there—I don't remember whether they accepted the working by depart-

Testimony of Hilliard J. Sands

ments at that time or shortly afterwards. I don't recall whether that was the first strike or second.

Q. Now, can you name the five men whom it was agreed were to be discharged?

A. As I previously stated.

Q. The same five men?

A. The same five men.

Q. Was there a written agreement made out at that time?

A. No; there was no written agreement made at that time. It was all a verbal agreement, and the committee and Mr. Potter both promised that the written agreement would be in the mail to us and we would find it in the mail Monday morning ready for signing and, in the meantime, Mr. Garry Sands permitted the men to go back on Monday even though there wasn't a signed agreement, in order that they could start earning money.

Q. Did you get the agreement?

A. The agreement never arrived.

Q. How long did the men work there at that time?

A. They worked Monday, Tuesday, and Wednesday night, up until Wednesday night.

Q. Up until Wednesday night?

A. I imagine so.

Q. Then what happened?

516 A. Thursday morning I came down to work about eight o'clock and as I drove into the factory yard I noticed the factory wasn't running and all the men were on picket duty, and I immediately went into the front office and called Garry Sands and reported it.

Q. Do you know why they weren't working?

A. I didn't know at that time.

Q. When did you first learn why the men weren't working?

A. I don't recall just how I found out, whether by word of mouth or whether they—

Q. Well, was it a long or short time after that?

A. It must have been two or three days later.

Q. Do you remember who told you?

A. No; I don't.

Q. Well, then, how long were the men out on that occasion?

A. Well, they finally came back to work on June 17th.

Testimony of Hilliard J. Sands

Q. Were there some committee meetings in connection with the settlement of that strike at which you were present?

A. I can't remember that we had any.

Q. Under what terms did they come back to work?

A. Well, Mr. Garry's father was returning from California and he was due to arrive on the 17th of June and Mr. Garry Sands knew that if he arrived at Cleveland and found the factory on strike that he would want to close down the factory permanently, so Garry Sands went around to the corner and he found a majority, quite a few men on the corner in the saloon and he asked them to come into the saloon there. I wasn't present, but Mr. Garry Sands told me—

Mr. Witt: That is all hearsay he is testifying to; as to what Mr. Garry Sands said.

Q. (By Mr. Smoyer). You have no knowledge of your own about this?

A. No; I wasn't present at the saloon.

Q. I am handing you—

Mr. Witt: This testimony about Mr. Garry Sands knowing about his dad coming in and that due to this strike that Garry Sands' father would close up the factory—I object to that.

The Witness: It is personal knowledge.

Mr. Smoyer: Because it is hearsay?

Trial Examiner Danaceau: It is in the record. I don't see how it will hurt you.

Q. (By Mr. Smoyer). I hand you what has been marked for identification Respondent's Exhibit 5 and ask you what that is?

A. Well, that was an agreement submitted by the committee for our approval.

Q. Did you have anything to do with the negotiations of that agreement?

A. Yes, sir.

Q. When and where were the terms of that agreement discussed?

518 A. In the factory in the front office.

Q. Who was present?

A. Mr. Garry Sands, myself, and the committee, the shop committee.

Q. And do you remember any particular clauses of the agreement over which there was more discussion than over others?

Testimony of Hilliard J. Sands

A. There was a discussion about working fifteen days, a new man working fifteen days, in which time he could be discharged without recourse. There were also two articles dealing with the factory running by departments and there was also—pardon me—

Q. Go ahead. Are you finished?

A. There were also articles in there dealing with the discharge of certain members who had refused to picket.

Q. Now, will you point out the clause that was the result of the discussion of the fifteen days and read it?

A. "That when a new employee is taken on the company will have the right to discharge within fifteen days provided he is unable to do the work to the approval of the foreman, after fifteen days the employee in question shall be granted a hearing before the shop committee and the management."

Q. What was the reason for that clause?

A. The decision on that clause was due to the fact that if we didn't put that in, the men would be immediately canvassed upon going to work to join the union, and after they joined the union it would be impossible to get a discharge, no matter how inefficient the man was.

519 Q. Will you point out the clause with respect to the operation of departments and read it?

A. "That when employees are laid off, seniority rights shall rule and by departments. That when one department is shut down, men from this department will not be transferred to work in other departments until all old men only within that department who were laid off have been called back."

Q. Will you point out the clause with reference to the Carbecks?

Mr. Witt: That is all in there.

Trial Examiner Danaceau: That is not necessary. It is already in the record.

Mr. Witt: Just a minute, Mr. Smoyer. Did you just say something to the witness?

Mr. Smoyer: No.

Mr. Witt: You are sure you didn't say something to the witness?

Mr. Smoyer: I am sure. He said something to me.

Mr. Witt: Well, we want that in the record, what the witness said to Mr. Smoyer.

Mr. Smoyer: Here is what he said to me.

Testimony of Hilliard J. Sands

Q. (By Mr. Smoyer). What did you say?

A. Well, I don't remember the exact words, but I remember Harry Gassell and Milburn Moritz, who were discharged for what they did during the strike.

520 Mr. Smoyer: Now I will say that is what he mentioned to me.

Mr. Witt: Well we want that in the record.

Q. (By Mr. Smoyer). Did you know Harry Gassell?

A. Yes; I knew Harry Gassell.

Q. As a workman, state whether or not he was a good workman?

A. I will say he was very efficient, a good, hard working man.

Q. Do you know why you had to discharge him?

A. Well, Harry told me—I called him and told him he couldn't come back to work, and he told me at that time that the reason he couldn't come back to work was the fact that—

Mr. Witt: We do not object to hearsay such as that, but there has been altogether too much hearsay in this man's testimony. We simply ask the Examiner to watch it.

Trial Examiner Danaceau: Let the witness answer and see how far it goes.

Mr. Stanley: I think the record should show that there was testimony on the other side as to why this man was discharged and why it is included in the contract. There was testimony as to that.

Mr. Witt: We are not objecting to that.

Mr. Smoyer: Let us withdraw that.

Trial Examiner Danaceau: Let the witness proceed.

Q. (By Mr. Smoyer). Let us go back to it this way. In the conference you had with the committee prior to this contract, was Harry Gassell discussed?

521 A. Harry Gassell was discussed and also Milburn Moritz.

Q. What did the committee say against them, as to why they should be excluded?

A. They claimed that they didn't do as they were supposed to do, as far as union activities were concerned and wouldn't picket the plant and therefore suspended from the union and were fined.

Q. Were those the only reasons they gave as to why you had to discharge him?

A. That is all I know of.

Testimony of Hilliard J. Sands

Q. Now, when did the factory re-open after the second strike?

A. On Monday, September 17th.

Q. June 17th?

A. June 17th.

Mr. Witt: Just a minute. I don't mind having the witness corrected in the proper way.

Mr. Stanley: Yes, that should be done, but it is so obvious a mistake—

Trial Examiner Danaceau: Let us proceed.

Q. (By Mr. Smoyer). Now, then, after the men had come back to work on June 17th, did you have a conversation with Charlie Rudd?

A. Yes, sir.

Q. How soon after the men came back did that conversation take place?

522 A. Within a two week period after they returned to work.

Q. And where did that conversation take place?

A. It took place in the tank heater department. I was on my regular inspection tour.

Q. And what was said by both you and Mr. Rudd?

A. Well, when I walked up to the department, walked up to Charlie Rudd. He dropped his work and he asked me a question. The question was, "Are the A. F. of L. union men allowed to canvass any new men in the shop before the fifteen day period has elapsed?" I answered by saying that the A. F. of L. or the M.E.S.A. had a perfect right to canvass any men they wished to join their union at any time at all. However, I didn't think it was fair for either union to ask a new man to join either union before the fifteen day period was up. He would have to pay his dues and if found inefficient he would be discharged and find no way of getting his money back. He came back with the question, "What right has the A. F. of L. to canvass men?" I told him that Garry and I had made it a policy to run the plant as an open shop plant and that we didn't care which union, if any, the men wished to join or whether they desired to be a free lance; it was all right with us. We made no demands whatever. However, I put in a personal word, saying that the A. F. of L. was a more conservative union than the M.E.S.A.; it was a personal opinion. The reason I gave it was that the A. F. of L. had less labor

Testimony of Hilliard J. Sands

the city here. I told him that the A. F. of L. officials, in my opinion, had more—were more apt to arbitrate with any management before they walked out on strike; not like Harry Potter who had called the men out on strike without a word to the management.

Q. When did that take place?

A. That took place I think on June 5th, and then Charlie Rudd said that the reason—

Trial Examiner Danaceau: Just a minute. You said a moment ago that that was about two weeks after the men returned to work; that was after they returned the second time?

The Witness: The second time.

Trial Examiner Danaceau: They returned June 17th; it couldn't have been June 5th.

Mr. Witt: He didn't say that.

Mr. Witt: You misunderstood Mr. Smoyer's question: the time he had reference to, this conversation was June 5th.

A. I am discussing the conversation—well, Charlie Rudd said that the reason the A. F. of L. men had less labor trouble than the M.E.S.A. was because the A. F. of L. men could be bribed while the M.E.S.A. men could not be bribed. I answered by saying that we never had any dealings with the A. F. of L.; I didn't know the organizers. I couldn't speak up for the A. F. of L., and as far as the M.E.S.A. was
524 concerned, I never tried to bribe them, never made any attempt and, therefore, the thing was irrelevant. He said, "Just try and bribe the M.E.S.A.," and I walked away.

Q. You stated all that conversation that you remember?

A. I have stated practically everything that I remember.

Q. Did Rudd say to you that it was possible to buy the A. F. of L. leaders?

A. Yes; he said it was possible to buy the A. F. of L. leaders.

Q. And did you say to Mr. Rudd that you could buy the M.E.S.A. leaders too?

A. No; I never said that.

Q. Do you remember how many employees you had; that is on May 21st, the time of the first strike?

A. There was between forty-eight and fifty, if I

Testimony of Hilliard J. Sands

Q. Now, how many did you put on after the second strike altogether?

A. There were close to eighty-five men.

Q. And what was the reason for the increase?

A. Well, we had been shut down for close to six to eight weeks without any production and orders had piled up and we were unable to ship. The goods were not fabricated and it was necessary to put a big crew in the plant in order to get all these orders out.

Mr. Witt: May we have the date on that?

525 Mr. Smoyer: The date is June 17th. If you will look at the sheet, you will notice they had about eighty more men on the payroll.

Q. (By Mr. Smoyer). And how were these employees, was it eighty-four you gave Mr. Witt?

Mr. Witt: Eighty-four the other day.

Q. (By Mr. Smoyer). How were they distributed throughout the plant?

A. They were distributed so much to each department; we filled up every department, each department working full capacity.

Q. What was the first department that got caught up in its work?

A. The tank heater department.

Q. And what did you do with respect to the men in that department after they had caught up with the schedule?

A. Well, under the terms of the contract, we thought it advisable to lay off these men working in the tank heater department until such time that there was sufficient orders to run again.

Q. When you say "under the terms of the contract" to which clause do you refer, handing you the Government's—or Respondent's Exhibit No. 5?

A. Under Articles Five and Six.

Q. What if anything did you do with respect
526 to laying off the men in that department?

A. Well, we called a meeting in the lunch-room of these employees who were working in the tank heater department and we discussed these articles in this contract and explained the meaning of the articles to these men and discussed all of the angles pertaining to these two articles and let them ask questions which we answered, and we gave them the—we asked them if it would be all right if we did discharge them and lay them off along these two articles, and we would hire

Testimony of Hilliard J. Sands

them back when it was deemed possible to run that department with a full crew, and they accepted.

Q. Now, were you dealing then with the men in the department, or was the committee present at that time?

A. No; the committee was not present at that time.

Q. Had put it up to the men in the department?

A. Yes, sir.

Q. How many men were in the department at the time?

A. There were about eight.

Q. Now, how many did you lay off?

A. I think we laid seven men off, seven or eight.

Q. Whom did you retain?

A. We retained Charlie Rudd, who was the foreman; the other men were discharged.

Mr. Witt: Did I understand you to say that the other men were discharged?

527 The Witness: Well, laid off is the proper word.

Q. (By Mr. Smoyer). Did you know a man by the name of Palko, P-a-l-k-o?

A. Who?

Q. Palko?

A. Yes, sir.

Q. He worked in that department?

A. He worked in that department.

Q. Was he laid off at that time?

A. I think he was.

Q. Now, why didn't you lay off Rudd?

A. Well, Rudd was a foreman and usually there are orders from time to time with special type of heaters, special type of heaters got to get out immediately, unable to stock these divers types, so orders have to be made up. There was seven men and work for one man; at least at that time there was.

Q. When did this layoff take place?

A. It was about July 15th, I think.

Q. July 15th. Commencing June 17th, 1935, that is when they went back to work, how many committee meetings did you attend, that is with the shop committee?

A. Oh, there were many meetings, probably two or three a week.

Q. What was the subject matter of those conferences?

A. Well, partially on these five men who we wished to discharge and also running the factory by

Testimony of Hilliard J. Sands

528 departments.

Q. How was the matter of the five men finally disposed of, if it was disposed of?

A. Well, shall I go back to the beginning?

Q. Well, I will withdraw that.

Mr. Witt: Are you now talking about the period after June 17th?

Mr. Smoyer: Yes.

The Witness: I want to know if you want me to go back to prior to June 17th?

Mr. Witt: We have notes on that.

Trial Examiner Danaceau: Let us have the questions more specific. We have gone over that partially; no need of going over that again.

Q. (By Mr. Smoyer). Under the terms of the settlement by which the men came back on June 17th, what was the agreement with respect to these five men?

A. Well, it was understood that these five men would not be recalled to work on June 3rd. Well—wait a minute.

Trial Examiner Danaceau: The answer will go out as not responsive.

Mr. Smoyer: Read the question please.

(Last question read by the Reporter.)

A. Well, the agreement was—

Mr. Witt: Excuse me please. Your question mean any written agreement with respect to these
529 five men?

Mr. Smoyer: There isn't anything in a written agreement.

The Witness: This is a verbal agreement?

Q. (By Mr. Smoyer). It is an oral agreement?

A. We verbally agreed that as these men would be found inefficient they would be immediately brought up before the committee and discharged, but specific cases had to be brought before the committee in order to do this.

Q. Specific cases of what?

A. Of inefficiency.

Q. When you talk about specific cases of inefficiency, were you permitted under that arrangement to go into the entire record of the employee?

A. No, sir. We had to give these men a new chance, a new opportunity to make good, and if they didn't make good after June 17th, and if we found any particular case of inefficiency, we could then bring them up to the committee.

Testimony of Hilliard J. Sands

Q. How many men were finally laid off?

A. All finally laid off. One man was finally discharged whose name was Jack Norman. The way we discharged him was, we brought each foreman down to the committee room and asked each for their opinions; if he would accept him in his department and not one of the foremen would accept him as a helper; all agreed he was a poor worker and the committee, after a final discussion, said that we would be allowed to discharge him. He was told to get in touch
530 with the committee. He was allowed to make a defense and he made a poor defense and he was discharged.

Q. That was with the acquiescence of the committee?

A. That was with the acquiescence of the committee.

Q. These four were laid off when?

A. Well, one of them, Hank Schilthorn was laid off with the tank heater crew; he wasn't formerly with the tank heater crew. He was put there after the strike because he was a brother-in-law of the foreman of the department and this foreman had to accept him, this man, and he asked us if we wouldn't put this man in his department and he would watch him very closely and wouldn't allow him to become inefficient or do things that were not allowed in the plant.

Q. Who was the foreman?

A. Charlie Rudd. And under those circumstances he worked out in the department until the tank heater crew were laid off. The other men were laid off as those departments were shut down.

Q. That was under the ordinary course of the layoff?

A. Under the ordinary course of the layoff. I personally didn't see any absolute examples of inefficiency by these men after June 17th, but I will say it was impossible to get any information from the foreman at this time.

Q. Had these men been informed that they were being watched after June 17th?

Mr. Witt: If you know.

531 Q. (By Mr. Smoyer). If I know?

A. No.

Q. The committee knew they were, of course?

A. Yes, sir.

Testimony of Hilliard J. Sands

Q. Now I believe you testified that the other topic of conversation was this operating by departments. How soon after the men had gone back to work, that is after June 17th, did that subject come up again?

A. Well, it didn't come up immediately for the simple reason that there were sufficient men in the factory to permit a full crew in each department.

- Trial Examiner Danaceau: Mr. Witness, the question is not what the reason is. Have every one of these answers please, have your answers responsive to the question, and if anybody wants to ask the reason for something, they will ask you. Read the question.

(Question read by the Reporter.)

A. About three weeks.

Q. Do you remember what the occasion was?

A. Well, the reason was we were contemplating on closing down certain departments until they were caught up.

Q. Did you talk that over with the committee?

A. Yes, sir.

Q. Now who were on the shop committee at that time?

532 A. Lada Jindra, Tony Moraco, Frank Pansky and Charlie Dusek.

Q. Who would meet with the committee on the employer's side?

A. Mr. Garry Sands and myself.

Q. Now, what position did the committee take with respect to operating the department alone or by men that only had had previous experience in that department?

A. Well, to answer that best, I could make a statement that one of the men stated, I think it was Tony Moraco, stated that the M.E.S.A. men would not permit any department to be run by A. F. of L. men unless the M.E.S.A. men were working.

Mr. Witt: Has he given us the date of this?

Q. (By Mr. Smoyer). Do you remember when this was?

A. Well, this was the first part of August.

Q. The early part of August. And state whether at that time, if you know, whether or not you had any A. F. of L. men working in the plant?

A. Well, we had found out about that by this time.

Q. In what department were these men employed?

A. The majority of them were employed in the machine shop.

Testimony of Hilliard J. Sands

Q. You don't know whether or not they had previous experience in your machine shop?

A. Well, prior to when?

Q. Prior to their hiring. Withdraw that question and put it this way. When did these men become your employees?

A. During the Government order, most of them.

Q. And then had they been laid off after that?

533 A. Yes, sir; they had been laid off during the winter and most of them had been rehired during the three months after the Government order; had been laid off again and rehired.

Q. So that they had had experience in the machine shop?

A. Yes, sir.

Q. Well, now, outside of Tony Moraco, do you remember any other member of the committee making a statement in connection with this?

A. Not at the first meetings where we discussed running by departments. It was merely general, their general attitude was—that is not responsive.

Trial Examiner Danaceau: The witness is acting as his own examiner.

Q. (By Mr. Smoyer). When you talked about running by departments, what did you mean?

A. Well, each department consists of a certain number of men who are trained to do a certain type of work. They do no other work. They are there merely to do one particular job, and this takes a total crew in order to run the department efficiently, and that is what we call a department, a group of men who were trained to do a certain type of work as a group.

Q. When you talk about running by departments, what do you mean, running one department? Well, you answer the question.

A. Well, running by departments means, say if we have work in the machine shop and the other
534 departments have no work there, they are all caught up on the work, running by departments would be to run that machine shop as a unit ignoring the other departments in the factory.

Q. They might be closed down at the time?

A. Yes, sir.

Q. Now was that subject matter discussed?

A. Yes, sir; it was brought up several times.

Mr. Witt: Will you get the date on that, Mr. Smoyer?

Testimony of Hilliard J. Sands

Q. (By Mr. Smoyer). You say this was first discussed, I believe, about the middle of July?

A. Yes, sir; and it was—

Q. That is, it began to get hot again by the middle of July?

A. Yes, sir.

Q. Because you had previously testified—how many meetings did you have with the committee after that?

A. Well, there was about one a week and it gradually worked up to a crescendo up to possibly one every day.

Q. Then when were you meeting, every day?

A. The latter part of August, prior to the final layoff.

Q. When was the final layoff?

A. That was along August 24th.

Q. August 24th.

Mr. Witt: The record will show it is the 21st.

Q. (By Mr. Smoyer). Now, what do you do in your machine shop?

535 A. Well, the raw castings was brought to the machine shop and they are placed by the different machines where they are to be fabricated and processed. A certain item—the foreman comes around, or the setup man comes around and sets up a certain machine for a certain item on the turret lathe so there is a possibility of six operations on one item. In each spindle he would set up an operation and then the foreman would place a man out on that machine and the total amount of castings that would come in would be machined at one time.

Q. And just where in the orderly manufacture of your articles does the machine shop come in?

A. It is what you might call the prime department and also the bottleneck. In other words, everything has to go through the machine shop before—

Q. It is possible to operate that department to the exclusion of any others?

A. Yes, sir.

Q. When did you start laying off men after the second strike?

A. Well, we started laying off the men about the middle of July and kept on laying off as we got up to the first part of August.

Q. And you finally laid off how many men?

A. We finally laid off—

Testimony of Hilliard J. Sands

Q. That is prior to the last layoff?

A. We finally laid off all the men down to twenty-four who remained.

536 Q. And then what did you do as far as the operations of this plant were concerned?

A. Well, we worked with twenty-four men for a short time and then we posted a notice to the effect that it would be shut down until further notice.

Q. Did you operate any short weeks?

A. At that time it was short business; it was necessary to run in—we did have to bring in men to run special orders, specially hired.

Q. Previous to August 21st, did you operate in a three day week?

A. No, sir—wait a minute.

Mr. Witt: I object to Mr. Garry Sands coaching the witness.

Mr. Smoyer: All the records show that there were three day periods.

Mr. Witt: I want to make an objection.

Mr. Garry Sands: I want to make an objection.

Trial Examiner Danaceau: Sit down, Mr. Sands. You have counsel to make your objections.

Mr. Garry Sands: I am sorry.

Q. (By Mr. Smoyer). Now when did you operate three days a week?

Mr. Witt: We object to that. He just said he didn't operate before August 21st.

537 Trial Examiner Danaceau: The witness indicated that he was mistaken and he changed something. We will proceed with that.

A. We operated three days a week for approximately three weeks prior to August 21st.

Q. Now will you state whether or not at the time you were operating that plant three days a week whether it would have been economical to operate any department more than that?

A. You want any specific instance?

Trial Examiner Danaceau: Answer the question.

The Witness: I don't remember the question.

Trial Examiner Danaceau: Read the question please, Mr. Reporter.

(Last question read by the Reporter.)

A. Yes, sir.

Q. To which department do you refer?

A. The machine shop.

Testimony of Hilliard J. Sands

Q. What was the status of the work to be processed in the machine shop; had much of it or little of it?

A. Well, I would say we had a fair stock of unfinished, unprocessed material, and we had a pretty good stock of partially machined mechanisms.

Q. I believe you already testified that the machine shop is a starting off place; is that right?

A. That's right.

Q. And before the other departments can go
538 on full again, is the machine shop—does that have anything to do with that?

Trial Examiner Danaceau: We have gone into that, Mr. Smoyer.

Mr. Smoyer: We have. All right.

Q. (By Mr. Smoyer). Now continue with these meetings. When is the next meeting that you remember between the respondent and the shop committee at which this matter of running by departments was discussed?

Mr. Witt: Has he said when the last one was?

Trial Examiner Danaceau: Perhaps the witness will make that clear in his answer.

Mr. Witt: The reason I asked that was because if I recall, the witness said he was talking about a meeting just before the final layoff, just a few minutes ago.

Q. (By Mr. Smoyer). I believe you previously testified that this matter got hot again about July 15th, somewhere in there. Now what is the next meeting that you remember?

A. I recall very distinctly a meeting held on Monday prior to the final layoff.

Trial Examiner Danaceau: Prior to August 21st?

The Witness: Yes, sir.

Q. (By Mr. Smoyer). And I believe that the calendar will show that was August 19th?

A. Yes, sir.

Q. And who was present at that meeting?

539 A. The shop committee, Garry Sands, and myself.

Q. Where was it held?

A. It was held in the front office.

Q. What was said and by whom?

A. Well, running by departments was again discussed at some length and the fact was also discussed just why we should run by departments.

Trial Examiner Danaceau: What did the men say and what did the management say?

Testimony of Hilliard J. Sands

A. Well, trying to put our point across, Garry Sands asked the committee how much work had been processed in the past three weeks, running three days a week, and the committee very definitely said there had been very little work accomplished, and Mr. Garry Sands pointed out that this was very costly and very inefficient and the committee admitted it.

Trial Examiner Danaceau: What else was said?

The Witness: Then Mr. Garry Sands said we must have a solution to this case. "I am giving my viewpoint but I am leaving it up to you men now." "You go back to the men and have a meeting with the men and let me know what their answer will be, what solution they can possibly arrive at to solve this problem."

Mr. Witt: He hasn't yet said what the problem was.

The Witness: Running by departments.

Trial Examiner Danaceau: He did say at the 540 outset that was the matter discussed. My question was what was said. Anything else said by either the management or the men?

The Witness: In the conversation the machine shop was again brought up and also the coil room, to prove to the committee that it was uneconomical to run two or three men in the department for three days a week. It was gone into at some length, and I think that is all.

Q. (By Mr. Smoyer). Now have you stated all of that conversation that you recollect?

A. Yes, sir.

Q. Now, to refresh your recollection, was there anything stated in that conversation about the advisability or plausibility of shipping men from other departments into the machine shop?

A. Well, we had discussed that continually and naturally it was brought up in this meeting.

Mr. Witt: That is completely unresponsive.

Trial Examiner Danaceau: The question is yes or no.

The Witness: Yes.

Mr. Witt: We want the rest of it stricken from the record.

Trial Examiner Danaceau: The rest will be disregarded.

Q. (By Mr. Smoyer). What was said at that meeting?

A. As I previously stated, the problem of running the machine shop and using the coil room as

Testimony of Hilliard J. Sands

541 example with three men on three days a week, and at that time it was discussed how efficiently you can run a department by simply shifting men from one department to another to make up a full crew.

Q. Who was that suggested by, shifting men from departments, if it was suggested?

A. It was suggested by the committee.

Q. Had that been tried?

A. That had been tried for a long period of time.

Q. With what result in the opinion of the management?

A. You might say with dire results.

Q. By that you mean?

A. By that I mean it was a very inefficient way of running a plant.

Q. Well, now, have you stated all of the conversation which you remember now, that is at the meeting of August 19?

A. One other point that was brought up was the fact that the machine shop in particular could not be run unless the M.E.S.A. men were there. In other words, the M.E.S.A. men could not be laid off while the machine shop was running and not having M.E.S.A. men there.

Q. Who said that?

A. Tony Moraco.

Q. Well, let us be more specific about that. Just what did he say?

A. Tony Moraco stated that we would not be allowed to run the machine shop with A. F. of L. men if
542 the M.E.S.A. men were laid off in other departments.

Q. When he said A. F. of L. men, what did you understand him to mean?

Mr. Witt: I object to that.

Trial Examiner Danaceau: It is not necessary.

Mr. Smoyer: All right.

Q. (By Mr. Smoyer). When was the next meeting?

Mr. Witt: Excuse me. Was the witness talking about the June 19th meeting?

The Witness: That's right.

Q. (By Mr. Smoyer). When was the next meeting?

A. On August 21st.

Q. Where did that take place?

A. Took place in the front office.

Testimony of Hilliard J. Sands

Q. Who was present?

A. The committee, Garry Sands, and myself.

Q. Now, then, what was said by the parties?

A. We went over every point we formerly discussed in the meeting of August 19th, and then we asked the committee if they had any solution to offer and they said they had no solution to the problem, and then Mr. Garry Sands asked the committee what he thought, what the committee thought he should do about it, and the committee stated that they thought that the only solution would be to shut down the plant and lay everybody off.

Q. Who in the committee said that?

543 A. Mr. Lada Jindra.

Q. What if anything more was said by the parties?

A. I don't recall any other points.

Q. Well, now, I will hand you what has been marked for the purpose of identification Respondent's Exhibit No. 3 and I will ask you the name, give the Reporter the names of the employees on that list who were regular machine shop employees?

Mr. Witt: Now, just a minute. Let us see that.

A. May I ask a question?

Trial Examiner Danaceau: Sure.

A. At what time?

Q. Well, say at the time the paper is dated?

A. Henry Meyer, Paul Brandt, Tony Avon, Ed Stack, Charles Dusek, and John Greely. Did I state John Greely?

Q. Yes.

Mr. Smoyer: How many does that make, Mr. Reporter?

The Reporter: Six.

Q. (By Mr. Smoyer). How many men on that list had regular employment in the machine shop after that date?

A. Henry Meyer, Ed Stack, John Greely, Charlie Dusek.

Q. Now, there has been testimony to the effect that sometime late in July there was a notice put up, stating that all men above No. 31 would be laid off. Now, who would have the numbers thirty-one and under?

544 A. The men that are on this sheet; who were on this sheet, they were the senior members.

Trial Examiner Danaceau: I guess we will have a recess for about five minutes.

Testimony of Hilliard J. Sands

(Recess had.)

Q. (By Mr. Smoyer). Now the term "classification" has been used here. What do you mean by classification?

Trial Examiner Danaceau: You mean with reference to employees?

Q. Yes, with reference to your employees?

A. Well, there is the one group who has seniority and the other group who were more or less temporary and who have a lower seniority.

Q. Does it have anything to do with the departments in which the employees are engaged?

A. Our last contract with the M.E.S.A. states that seniority shall rule by departments.

Q. And were the employees ever informed as to which particular department they were allocated?

A. Yes; I posted a notice on the bulletin board with all of the names of the employees typed on this bulletin and they were all put under a heading which was the department in which they were supposed to work.

Trial Examiner Danaceau: When was this?

The Witness: This was after the men returned
545 to work.

Q. (By Mr. Smoyer). And how soon after?

A. Very very shortly after June 17th.

Q. And how long did that list remain posted?

A. I never took it down. It remained posted until about September.

Q. About September of this year?

A. Yes.

Q. How long did you have occasion to go to the plant out there, or are you employed in the plant?

A. I am continually in the factory; very very rarely do I go in the office.

Q. Do you have occasion to observe the employees at work?

A. Yes, sir.

Q. And during their lunch hours?

A. Not during their lunch hours.

Q. Not during their lunch hours. Do you have any knowledge of any friction among the employees, any instances of that?

A. Yes, sir.

Q. Now when would be the first instance that took place?

A. About May, 1934 one of our instances was with a man by the name of Tony Ayon.

Testimony of Hilliard J. Sands

Q. Tell us about it?

A. There was a good deal of friction between Tony Avon and the foreman of the machine shop, who was George Carbeck, Junior. Tony Avon worked in the machine shop at that time and there was a continual string of complaints on both sides that—
546 well, a specific—

Q. The complaints come to you?

A. Yes. Specifically, that Carbeck didn't take the right attitude in giving Tony Avon instructions, and George Carbeck would say that Tony Avon looked for trouble and that he very rarely said anything to Avon and I had several conferences with them both, telling them to be strictly businesslike and not to talk about anything during business hours, and it got to a point where I had to remove Tony Avon to another department. Other cases—

Q. I was just going to ask you if you know of any other instances that you have mind?

A. It is very difficult to remember any specific instances. If I can speak generally—

Trial Examiner Danaceau: Well—

Q. Have there been complaints made to you by members of the shop committee or by non-members of the M.E.S.A. respecting unfriendliness or anything like that in the shop?

A. Yes, sir. George Carbeck complained several times.

Q. Is that Junior?

A. Junior. George Carbeck, Junior complained several times about the type of work that men who were switched from other departments into the machine shop did. One instance—

Trial Examiner Danaceau: Well, let us have
547 the time.

Q. (By Mr. Smoyer). What is the meat of the complaint and when was it made?

Mr. Witt: And who are the men you complained about?

Q. Let us take it one at a time.

Trial Examiner Danaceau: First, when was this?

The Witness: This was, of course, prior to the strike.

Q. (By Mr. Smoyer). Can you fix the date any closer to that; that is, fix it more particularly than that?

A. Well, as I said before, there is no specific instance that I can talk about.

Testimony of Hilliard J. Sands

Trial Examiner Danaceau: Just a moment. We are trying to get the exact time or as close to the exact time as we can get.

Q. (By Mr. Smoyer). When Carbeck complained to you about the work—

Trial Examiner Danaceau: Is that the first time before they walked out?

The Witness: Yes, sir.

Trial Examiner Danaceau: How many days or how long before they walked out?

The Witness: All that spring there were several complaints and fixing a date would be practically impossible. There might be a complaint one a day for a few weeks and then you wouldn't have for a week and then for days he would complain again.

Q. Have you the names of the persons who complained?

Mr. Witt: Just to get the record straight,
548 about whose work did he complain?

The Witness: There was Tony Avon, Paul Brandt, Tony Moraco; that is all I remember definitely.

Q. (By Mr. Smoyer). Do you remember any more in detail the subject matter of the complaint?

Trial Examiner Danaceau: Yes or no; do you remember the subject matter of the complaint?

A. I am trying to think if I remember any specific instance. I have already stated Tony Avon. Paul Brandt, he merely stated to me that he didn't like his work, that he was not any good as far as efficiency was concerned in the machine shop, and he would like to have him transferred, which I did. Tony Moraco, he complained that Tony Moraco was not efficient, that he was very sulky when spoken to and usually very impertinent in his answers, when spoken to. He wouldn't pay any attention when told what to do and sat at his work more or less at ease, sat with his feet up in the air and sat back in his chair and more or less took his time in doing his work.

Q. Now, were there any complaints brought to you by persons other than the Carbecks?

Mr. Lodish: Mr. Examiner, he testified to just one Carbeck not Carbecks.

Q. (By Mr. Smoyer). Other than Carbeck, Junior?

A. Yes.

Q. Who were they?

Testimony of Hilliard J. Sands

549 A. Charlie Rudd and Al Farrell.

Q. They brought complaints?

A. Yes, sir.

Q. What was the subject matter?

A. Al Farrell complained about the work done by

C. Ball.

Q. C. Ball, and Al Farrell was the foreman of the—

A. Coil room.

Q. Now, what did he say about C. Ball?

A. He complained that C. Ball was slow; he didn't do his work efficiently, and that he thought that another man would be better in Ball's place or position.

Q. So what happened to Mr. Ball?

A. Well, I told Al Farrell to change Ball's job to a different one and Al Farrell had to change this man two or three times, he finally found a position where he worked out fairly satisfactory.

Q. What was the subject matter of Mr. Rudd's complaint?

A. Well, when I shifted men up to the machine shop to make up a crew for Charlie Rudd, he would complain about the men on the nailing machine.

Q. On the nailing machine?

A. And also on the bronzing; that that particular man was not efficient.

Q. Well, now, where was Rudd employed; what was his department?

A. Charlie Rudd was foreman of the tank
550 heater department.

Q. You said you sent the men up to the machine shop?

A. Pardon me. I meant the tank heater department.

Mr. Witt: Mr. Reporter, may we have that answer read? I think he said he sent the men to the machine shop to Charlie Rudd's department?

(Last answer read by the Reporter.)

Q. (By Mr. Smoyer). You meant instead of sending men up to the machine shop, you meant the tank heater department?

A. Yes, the tank heater department.

Q. Everybody speak to each other among your employees up there?

A. No. There was a good deal of dissension among them.

Q. What was the lineup, if there was one?

A. Well, the lineup was George Carbeck, Senior

Testimony of Hilliard J. Sands

and George Carbeck, Junior. The opponents would be Charles Rudd, Bill Brandt, and Al Farrell.

Q. Now, after the strike, that is after they had gone back to work on June 17th, was there any change in that following?

A. No. If anything, it became more acute.

Q. Were there any accessions to either side?

A. What was that?

Q. Were there any accessions?

Mr. Witt: Simplify the question.

A. I don't understand that.

Q. Change the question. After the strike,
551 there were additional men employed; is that right?

A. Yes, sir.

Q. Do you know whether or not they were affiliated with any union?

A. I believe that the majority of the men who worked in the machine shop joined the A. F. of L. union.

Q. Did you observe any—how they were treated with respect to any other employees, or were they all treated alike?

A. Well, they were not treated alike.

Q. Just what did you observe?

A. Well, the A. F. of L. men were more or less bothered by the—harassed by the M.E.S.A. men.

Q. What did you see; what did you hear?

A. Well, some of the men of the A. F. of L. come to me and said that they couldn't eat in the lunchroom and asked permission if they could eat in some other part in the factory, the rule being all employees should eat in the lunchroom. I at that time, seeing the condition, gave these A. F. of L. men permission to eat in the lunchroom, in the machine shop.

Q. What reason did they give that they couldn't eat in the lunchroom?

A. They told me when they attempted to get in the lunchroom or go to their lockers, they would be shoved around, and also when they tried to sit at the tables the M.E.S.A. men wouldn't make way for them or allow
552 them to sit with them, and if they were sitting with them remarks were passed to embarrass the A. F. of L. members.

Q. Did you grant their request?

A. I granted their request in order to preserve peace.

Testimony of Hilliard J. Sands

Q. Now were any requests made of you or of Mr. Sands in your presence for the discharge of anybody that was not a M.E.S.A. member?

A. Yes, sir.

Q. And when was that made?

A. Before the fifteen day period had elapsed and after June 17th. I called a meeting of the foremen and gave them instructions to hand to me a list of the men whom they thought were inefficient and I told them to have this list on my desk before the fifteen days had elapsed. They did that and most of them supplied a list of the men whom they thought were inefficient and wanted them to be discharged.

Mr. Witt: Do I understand that was within a fifteen day period?

The Witness: Yes, sir.

Q. (By Mr. Smoyer). Were they discharged?

A. All but one.

Q. Now you mentioned the Carbecks. Well, I believe the contract covers that. Now, coming to the Carbecks and the Carbecks' relatives, who were the relatives of the Carbecks?

A. There was only one relative that I personally knew was a relative and that was Harry Gassell.

Mr. Smoyer: Is that tentative form of contract offered in evidence?

(Conversation had off the record.)

Q. (By Mr. Smoyer). In a tentative proposal by the committee it was requested by the committee that the Carbecks and all their relatives be discharged; wasn't it?

A. Yes, sir.

Q. Was there any other request made by the committee that the Carbecks be discharged?

A. Yes, sir.

Q. When?

A. At the committee meeting where these contracts were discussed during the strike.

Q. During the strike. Now were there any requests made after that?

A. Not officially, to my knowledge.

Q. Now you say you had been with this plant out there for around fifteen, thirteen or fourteen years?

A. Yes, sir.

Q. How long have you known Carbeck, Senior?

A. I have known him all the time he has been there.

Q. He has been there during that time, has he?

Testimony of Hilliard J. Sands

A. Yes, sir.

Q. What is his job?

A. He is a toolmaker.

554 Q. What is the tie up, if any, between the machine shop and the tool room?

A. The tool room itself is in the machine shop; it is surrounded by a fence to fence off the machines, the production machines in the machine shop. All the jigs, all the dies, all the jaws and the mechanisms that are used out in the machine shop are made in the tool room and are repaired and maintained in the tool room.

Q. And how long has Carbeck, Senior been a tool maker?

A. I judge it is about twelve years.

Q. Now Carbeck, Junior, how long have you known him?

A. Approximately, oh about four years; less than that.

Q. About four years or less than that?

A. Yes.

Q. He is the son of George Carbeck, Senior?

A. Yes.

Q. Where did Carbeck, Junior learn his trade?

A. George Carbeck, Junior is also a tool maker; he took his apprenticeship as a tool maker under his father at our plant.

Q. Have you had any other tool makers in your employ for that length of time?

A. Did you say for that length of time or during that time?

Q. For that length of time?

A. I am sure George Carbeck is with us more than any other tool maker.

Trial Examiner Danaceau: George Carbeck,
555 Senior?

The Witness: Yes.

Q. (By Mr. Smoyer). Now, subsequent to August 21st, after August 21st, were there any employees that continued to work?

A. After August 21st?

Q. After that layoff on August 21st?

A. We had called in for work two or three men to do work which was rush.

Q. Now any others?

A. Not until September 3rd.

Q. Well, to refresh your recollection, did the Carbecks work after August 21st?

Testimony of Hilliard J. Sands

A. Yes, their work was rush.

Q. What were they working on?

A. They were working on a new model heater; that is equipment for new model heaters.

Q. What was the nature of their work?

A. The nature of their work specifically was classed as non-productive.

Q. I mean after August 21st, just what were they doing? You say working on new models; can you be more specific?

A. Making jigs and dies and tools.

Q. Now, do you know—is it Albert Farrell?

A. Yes, sir.

Q. Albert Farrell. Do you remember his coming to the shop between August 21st and September 3rd, that is after the time that you had that layoff and before you started up again?

A. No, sir.

Q. To refresh your recollection, do you remember anything about his trying to buy a stove?

A. Yes, sir.

Q. And when was that?

A. I think that was the last week in August.

Q. Did you have a conversation with him at that time?

A. Yes, sir.

Q. And who were present?

A. Ed McKiernan, the shipping clerk.

Q. That is you and Mr. Farrell and Mr. Ed McKiernan?

A. Yes.

Q. Anybody else present?

A. I don't recall anybody around there.

Q. Can you fix the date a little closer?

A. Well, he was there two or three times.

Q. Two or three times. Well, now, let us take the first time. What is the approximate date of that?

A. That would be on Monday following August 21st.

Q. Monday, the calendar will show that that would be August 26th. Now, who was present at that time?

A. I was the only one he spoke to.

Q. You had a conversation with him?

557 A. Yes, sir.

Q. All right. Will you state the conversation?

A. He asked me if a letter had arrived from Mr. Hamilton. Mr. Hamilton at that time was on his vaca-

Testimony of Hilliard J. Sands

tion in Canada and I asked him what it was revelant to and Mr. Farrell said that he expected a letter from Hamilton saying for Al Farrell to get a certain stove, to purchase a certain stove wholesale, and Mr. Al Farrell said that Mr. Hamilton told him that the letter would arrive on Monday and then I investigated and found that no such letter had arrived.

Q. Have you stated all of the conversation?

A. All that I can recall.

Q. When next did you have a conversation with Al Farrell?

A. He came back about twice after that, still inquiring for that letter.

Q. Can you tell us the first of those times that he came back at the time?

A. No, sir; except that they were probably supposed to be two days apart.

Q. Who was present on this second occasion?

A. I think at this meeting, at this occasion we were out on the dock, and I think Mr. Garry Sands was present.

Q. Just to cut this short, I am going to ask you do you remember a conversation that you and Garry Sands and Hamilton and Farrell were present?

A. No, sir.

558 Q. Well, at this time on the dock when you say Garry Sands was there, did you have a conversation with Farrell at that time?

A. Why—

Trial Examiner Danaceau: Yes or no?

The Witness: Yes.

Q. (By Mr. Smoyer). And what was said and by whom?

A. I only heard partially of the conversation because I walked away about in the middle of it, but you want me to say what was said?

Mr. Witt: He didn't hear it all.

Trial Examiner Danaceau: He can testify as to what he did hear.

Q. (By Mr. Smoyer). What did you hear?

A. The closing down of the plant.

Mr. Witt: Who said what and what was said?

The Witness: Mr. Garry Sands told Al Farrell the reasons why we had shut the plant down.

Q. (By Mr. Smoyer). Just tell us what he said.

A. That we had tried to work the plant by depart-

Testimony of Hilliard J. Sands

ments and how uneconomical it was not to do it that way and also to shut—

Q. Just what did he say?

A. He discussed—

Trial Examiner Danaceau: What did Mr. Sands
559 say?

The Witness: Mr. Sands said that he thought that some of the men in the plant who were receiving high wages and with temporary work might be better off if they worked for a little less wages and more steady employment, and he asked Al Farrell's opinion on that.

Q. (By Mr. Smoyer). What did Mr. Farrell say?

A. Mr. Farrell said he thought that was a pretty good idea.

Q. Have you stated all that you have heard?

A. That is all I heard.

Q. Now was there a subsequent conversation at which you were present with Al Farrell?

A. I can't recall it.

Trial Examiner Danaceau: Now it is twelve o'clock, gentleman, and we will adjourn until one thirty.

(Thereupon, at 12:00 o'clock p. m. a recess was taken until 1:30 o'clock p. m.)

AFTER RECESS

(The hearing was resumed at 1:30 o'clock p. m., pursuant to the taking of recess.)

HILLIARD J. SANDS,

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued).

Trial Examiner Danaceau: I believe Mr. Stanley is using the telephone. Do you want to proceed without him?

Mr. Smoyer: I am not quite ready yet, your
560 Honor. Just a moment.

Q. (By Mr. Smoyer). I believe you testified to, I think, two or three conversations with Al Farrell?

A. Yes.

Q. And were you present at any conversation at which the specific rate of pay of Mr. Farrell was dis-

Testimony of Hilliard J. Sands

A. No, sir.

Q. You weren't. Now, do you know an employee by the name of Emil Tulow?

A. Yes, sir.

Q. Where was he employed?

A. He was employed in the finishing department as a sprayer.

Q. As a sprayer. Now, subsequent to August 21st and prior to the layoff, did you have any conversation with Mr. Tulow at the plant?

A. August 21st?

Q. Subsequent to that?

A. Not that I recall.

Q. To refresh your recollection, do you remember him coming in to perform some work along towards the end of August?

A. Yes, sir.

Q. Did you send for him?

A. Yes, sir.

Q. How long did he work?

A. I believe he worked one day.

561 Q. Did you pay him off then?

A. Yes, sir.

Q. Who paid him off?

A. I believe I did.

Q. Did you have any conversation at that time with him that you recall?

A. I believe he asked me when he would come back to work.

Q. What did you tell him?

A. I told him I didn't know. It all depended on whether we had any business or not.

Q. Now, do you know an employee by the name of Stanley Linski?

A. Yes, sir.

Q. In what department was he employed?

A. The storage heater department.

Q. Calling your attention to Friday, August 30th, were you present at a conversation between him and Mr. Sands, Mr. Garry Sands?

A. Yes, sir.

Q. Who else was there, if anybody?

A. Nobody, to my knowledge.

Q. Frank Pansky there?

A. No, sir.

Q. He was not. Now where did this conversation take place?

Testimony of Hilliard J. Sands

A. In the front office, in Mr. Garry Sands' private office.

562 Q. What was said by Mr. Garry Sands or yourself or Mr. Linski?

A. Garry Sands told—

Mr. Lodish: He testified he didn't remember Linski being there.

Mr. Smoyer: I asked him whether Pansky was there and he didn't remember.

Mr. Lodish: I beg your pardon?

Trial Examiner Danaceau: Proceed.

A. Mr. Garry Sands asked Stanley Linski if he was favorable to working on a more steady basis with reduced hourly wage, and Mr. Linski stated that he thought that would be all right but he would have to go home and talk it over with his wife.

Q. How long did that conversation last?

A. Oh, I judge about a half hour.

Q. Do you remember anything else being said by the parties?

A. Why, Stanley Linski asked us if any of the other men would be coming back to work and wanted to know if he did come back to work and the other men did not, what protection he would get.

Q. And what was said to that, if anything?

A. Well, he told him that this was an agreement just between Stanley Linski and the management and that we didn't think it had anything to do with any of the other men, the rest of the men, and it was merely up to Stanley Linski himself if he wanted to accept this arrangement, and Mr. Garry Sands stated that it was absolutely up to him and we didn't want to force him to make a decision one way or another, and
563 when he expressed a desire to go home and talk it over with his wife, we told him that was the thing to do.

Q. Now have you stated all of that conversation?

A. I believe I have.

Q. Now when next were you present at a conversation when Mr. Linski was there and Garry Sands, if at all?

A. It was shortly after—how long, I don't know.

Q. Shortly after?

A. A few days later.

Q. Had the plant yet started to operate?

A. I believe it had.

Testimony of Hilliard J. Sands

Q. Where was that conversation?

A. In the same location.

Q. Who all were present?

A. Mr. Garry Sands, myself, and Stanley Linski.

Q. What was said by those present?

A. Well, Stanley Linski thought—

Q. What did he say?

A. Stanley Linski said he would like to accept the proposition, that he was favorable toward it, but his wife was afraid that if he did get back to work under those arrangements and the rest of the M.E.S.A. men would not return, that they would attack him in some way or his home and his wife was very much frightened on that score and under the circumstances
564 he was afraid to return to work.

Q. Was there anything said about the A. F. of L. union at that time?

A. Well, we told Stanley Linski that the machine shop was then running and it was running under the A. F. of L. union, and we explained to him that the A. F. of L. union had guaranteed protection to their own men and would see to it that they were allowed to work. We also explained to him that the police had given us protection so far as to see that the men got into the factory and were taken home safely.

Q. What did Mr. Linski say to that proposition?

A. Well, he stated he didn't think he would accept under the circumstances, because he was afraid not what would happen in the shop but what would happen at the home.

Mr. Witt: Is the witness now saying what he said?

The Witness: Yes.

Q. (By Mr. Smoyer). Then what did he do so far as you know?

Trial Examiner Danaceau: You mean what he did by way of leaving?

Mr. Smoyer: Yes.

A. Well, he got up and walked out of the shipping room at the back door.

Q. Do you know a man by the name of Frank Pansky?

A. Yes, sir.

Q. Where was he employed?

A. He was employed in the sheet metal department.
565

Q. We are calling your attention to about the

Testimony of Hilliard J. Sands

between him and Garry Sands?

A. Yes, sir.

Q. Do you remember how he came to the plant or how it was he came to the plant?

A. Well, we requested him to come to the plant so we could talk to him.

Q. Who all were present at that conversation?

A. Mr. Garry Sands, Mr. Frank Pansky, and myself.

Q. Will you please state the conversation?

A. Well, Frank came in and sat down. Mr. Garry Sands started to tell him the same thing that he told Stanley Linski, to wit, that the factory, the machine shop was running then, that it had been running and we intended to keep it running, and that the machine shop was running under the direction of the A. F. of L. protection.

Q. Now, this is the first conversation you are talking about. This belongs at the end of August, and the testimony is that the plant did not start to operate until the first part of September. Confine yourself to the first conversation.

A. Well, the first conversation took place—Frank Pansky—I believe he came in through the rear entrance, came into the office, and Mr. Garry Sands asked him if he would be willing to take a cut in his hourly wage if

he could be guaranteed steady work and Frank
566 Pansky was very much favorable, very favorable

to this proposition. He also asked us if he came back to work if we would take his father back to work. Mr. Garry Sands stated that we couldn't tell him whether John Pansky would be taken back or not but that would be taken care of later, and Frank—

Q. How—

Trial Examiner Danaceau: Just a minute. Let him finish his answer.

A. Frank also said he wanted to think the proposition over and return later and give us his answer.

Q. Do you recall whether or not Frank Pansky worked that week?

A. I don't recall whether he worked that week.

Q. When next did you see Frank Pansky with respect to this proposition, if at all?

A. It was within a few days later.

Q. Was the plant operating?

A. I believe it was.

Q. What was said by whom?

Testimony of Hilliard J. Sands

A. Mr. Garry Sands asked Frank what his decision had been and some discussion took place on just how much a cut he would have to take in order to get guaranteed steady work, and finally arrived at a figure which he accepted. Then he wanted to know about the protection, how he can get into the plant and away from it without being bothered, and Mr. Garry Sands said he was running the machine shop under the

567 A. F. of L. and how he had police protection to and from the plant, and Frank Pansky asked us how you went about joining the A. F. of L., and Mr. Garry Sands said he didn't know the details but he thought you had to sign a blank, and Mr. Garry Sands requested me to get a blank form, which I did. I went up to the machine shop and brought back a form which I submitted to Frank Pansky, and Frank Pansky signed it and he wanted to know about paying the dues at that time, and Mr. Garry Sands said he could pay the dues a little later but that that would be all right and he understood that Frank was going to get work and he accepted the proposition in detail and then left.

Q. Now, have you repeated all of the conversation you recalled?

A. Yes, sir.

Q. Did Garry Sands say anything in that conversation that if Pansky would accept this proposition he would give him a ten percent increase in three months and another ten percent in another three months and another five percent increase in another three months?

A. What Garry Sands said—

Trial Examiner Danaceau: Wait a minute. Did he or did he not say that?

The Witness: No; he didn't say those particular words.

Q. (By Mr. Smoyer). What did he say?

A. Mr. Garry Sands stated after—this was
568 after Frank said he would join the union—Mr.

Garry Sands explained a few points about our agreement with the A. F. of L. union, just one of those items, stated how much raise these men would get and the period, but the periods you have marked there are not correct.

Q. The periods that Garry Sands mentioned are those in the A. F. of L. agreement?

A. Yes, sir; and he told Frank Pansky that if he joined the A. F. of L., of course, he would come under the agreement of the A. F. of L. union.

Testimony of Hilliard J. Sands

Q. Did Garry Sands say in that conversation words to this effect: "All you have to do to get this increase if you drop the M.E.S.A. and join the A. F. of L.?"

A. No, sir.

Q. Did Garry Sands say in that conversation that he didn't want any of the old men back?

Mr. Lodish: Mr. Examiner, I don't believe that question was answered exactly in that way. I presume the question is brought because it is a repetition of previous testimony, but if previous testimony is not exactly like that, it is not quite proper.

Mr. Smoyer: Here is my note.

Trial Examiner Danaceau: It would take an awful long time to check through the testimony to get the exact wording. I will let the witness answer and
569 the record will show what was his answer.

Q. Let me reframe the question. Withdraw that other question. Did Garry Sands say in substance or in words to that effect that he didn't want any of the old men back?

A. I don't recall whether he said that or not.

Q. Now these conversations that took place in your presence between Garry Sands and Farrell, Tulow, Linski, and Pansky; will you state whether or not those men were informed that they were the only ones that Mr. Sands was talking to in that way?

A. Well, he told Al Ochs, Stanley Linski, Frank Dolish, and Frank Pansky, and he stated it in this way. "I am not giving this proposition to every one. We are only offering this proposition to just four or five men whom we think are fit to accept this proposition."

Q. When did this conversation with Elmer Ochs, you mean?

A. Yes, sir.

Q. When was that?

A. That was in the same period of time as these other conversations we were speaking about.

Q. Well, now, was the plant operating at the time?

A. We spoke to them before and after they started opening the plant.

Q. What was the conversation between Mr. Garry Sands and Mr. Ochs at the time that the plant was running?

570 A. Well, the conversation as a whole ran along the same lines as the others. Mr. Ochs

Testimony of Hilliard J. Sands

wished to accept the proposition, but as the other men were so afraid to accept, he told us he would be afraid to accept the proposition because of what might happen to him if he did. He seemed to be very anxious to accept the proposition.

Mr. Witt: Oh—

The Witness: Wait a minute.

Q. (By Mr. Smoyer). Leave that go out.

A. I will leave that out. He said he was very anxious.

Mr. Witt: Just a minute please.

Trial Examiner Danaceau: That part about "he seemed" may go out. Explain your answer.

The Witness: He said he was very anxious to accept the proposition but that he and his wife were very much frightened.

Q. (By Mr. Smoyer). Was a particular job offered to Mr. Ochs on that occasion?

A. The particular job that was offered to him was that of working in the coil room.

Q. In the coil room; just working in it or was he to have a supervisory job?

A. He was to have a supervisory job.

Q. Now, your plant opened up on September 3rd?

A. Yes, sir.

Q. How many men did you have when you opened it up?

571 A. There were approximately ten men.

Q. What departments of the plant were operating?

A. Just the machine shop.

Q. And how long did you operate the machine shop alone?

A. For a period of two weeks.

Q. I am handing you what has been marked as the Board's Exhibit No. 4 and ask you what it is?

A. It is a copy of the agreement between the Sands Manufacturing Company and the A. F. of L. union.

Q. Did you have any part in the negotiations with that agreement?

A. Yes, sir.

Mr. Witt: What was the answer?

The Witness: Yes, sir.

Q. (By Mr. Smoyer). When?

A. The first meeting took place either the 26th or 27th of August.

Mr. Smoyer: At this time, Mr. Chairman, we want

Testimony of Hilliard J. Sands

to amend our answer, changing the date of that meeting and conform it to the testimony. The answer sets it forth as the 21st.

Trial Examiner Danaceau: Just a moment. That request is granted.

Mr. Smoyer: And the other request is that the answer makes a mistake of one week; that is as to the date of the second strike. I believe we plead in the answer the 10th, the men coming back on the 572 10th and staying two or three days.

Trial Examiner Danaceau: It should be the 17th.

Mr. Smoyer: It should be June 3rd. Just made one week's error and ask leave to make that clearer.

Trial Examiner Danaceau: Coming back the first time?

Mr. Smoyer: Should be the 3rd.

Trial Examiner Danaceau: That request will be granted.

Mr. Smoyer: That instead of going out on the 12th or 13th, went out on the 6th.

Trial Examiner Danaceau: Does that answer have an incorrect date of the going out?

Mr. Smoyer: Yes; just a mistake of a week.

Trial Examiner Danaceau: The answer will be corrected to comply with the testimony.

Mr. Witt: We want the record to show that we make no objections.

Trial Examiner Danaceau: No objection has been made. The record will show.

Q. (By Mr. Smoyer). Well, on the 26th or 27th you had something to do with the negotiations of that contract?

A. Yes, sir.

Q. Where was that?

A. That was at Mr. Milz's office.

Q. Mr. Milz's office, and Mr. Milz bears what relationship to the machinist's union?

A. Why, I think he is in charge of the ma-
573 chinist's union.

Q. Is he in charge of it?

A. Yes.

Q. Is he the business agent that you know of?

A. Yes.

Q. Who else was present at that time?

A. Mr. Garry Sands and Mr.—I think his name is Mr. McWeeney.

Testimony of Hilliard J. Sands

Q. McWeeney, and that is Mr. James McWeeney?

A. Yes, sir.

Q. Did you arrive at an agreement at that time?

A. Tentatively.

Q. Tentatively. What was the arrangement?

A. Well, we had arrived at the majority of the articles in the agreement but there were further articles that had to be gone over and added at a later date.

Trial Examiner Danaceau: The question was what was the tentative agreement?

Q. (By Mr. Smoyer). Yes, just generally speaking?

A. Oh, I don't recall any special agreement, just a general shaping up of the—

Q. Then we will go on. Did you meet him again?

A. Yes, we met him again.

Q. When was that?

Mr. Witt: Who was this; Milz?

Q. (By Mr. Smoyer). Milz.

A. It was the Saturday before the 3rd of
574 September.

Q. And what was done at that conference?

A. Well, they finally—the final agreement had been typed and shaped up and it was agreed upon by both parties that the contract was agreeable.

Q. Was it signed at that time?

A. Yes, sir.

Q. And that was to take effect when?

A. It was to take effect September 3rd.

Q. Now, September 3rd, how did you get the men with whom you opened the plant?

Mr. Stanley: Didn't September 3rd fall on Labor Day?

Mr. Witt: No; it was the Tuesday after Labor Day.

Mr. Smoyer: Withdraw that question.

Q. (By Mr. Smoyer). How did you procure the men with whom you opened the machine shop on September 3rd?

A. Mr. Milz sent telegrams to A. F. of L. members.

Q. Which A. F. of L. members?

A. The A. F. of L. members who were A. F. of L. members and who had worked in our shop previous to September 3rd.

Q. How many men showed up in response to those telegrams?

A. There was a total of about sixteen men.

Q. Over what period of time?

Testimony of Hilliard J. Sands

A. About a week's time.

Q. Now did you obtain other men?

A. Yes, sir.

575 Q. How did you obtain the men?

A. I called up the Cuyahoga County Relief.

Q. What kind of men did you tell them you wanted?

A. I requested them to send over men who were machinists or had machine shop experience.

Q. How many men did you get in response to that call?

A. Well, there was about fifty men altogether.

Q. How many of them did you hire?

A. We hired a good many over a long period of time. At that particular time, that first week, we hired about ten I guess.

Q. Now, in your hiring of men out there, will you state whether or not it made any difference to you as to whether or not they belonged to a union or not?

Mr. Witt: We object to that.

Trial Examiner Danaceau: The objection is sustained in that form. It will be a conclusion of the fact.

Q. (By Mr. Smoyer). In hiring the men, did you interrogate them as to their affiliation with labor unions?

A. No, sir.

Q. Do you know whether or not if there are men in your employ at the present time that belong to no union?

A. I know that there are some who belong to no union at all.

Q. Now, there is just one thing I want to go back to for a moment that we sort of left hanging in the air this morning. The men came back to work

576 after the first strike on June 3rd?

A. Yes, sir.

Q. Now you have given us the names of these employees whom you have talked over about discharging; did you have any conversation with them on June 3rd, 4th, 5th, or 6th, in there?

A. Monday morning, June 3rd, these five men came into the front office and they asked for me. I was called, and when I came into the front office, I took them into the private office where I interviewed them. They wished to know why they were discharged and why they were not told that they were discharged, and I told them that I was very much surprised; that Mr.

Testimony of Hilliard J. Sands

Potter and the committee had given permission to the management for their dismissal. I said the committee and Mr. Potter had also known why they were being dismissed and that they should report to Mr. Potter or to the committee to find out just why they were being discharged. I said it was understood that the committee or Mr. Potter would let them know that they were being discharged and why.

Q. Is that all the conversation?

A. Well, a few of the men tried to find out just why they were discharged. Lou Meyers asked me what I had against him, and I told him that I had nothing in particular against any of the men; that I just didn't think their work was efficient.

Q. Is that all the conversation?

A. Yes, sir. I completed the conversation by telling them that the best thing for them to do is
577 to go back to the committee and find out why they were discharged.

Q. Now, did they come back to you on any other occasion?

A. No, sir.

Q. They didn't?

A. No, sir.

Q. Now the plant was closed from August 21st to September 3rd. Now I will ask you this question. Was there picketing after September 3rd?

A. Yes, sir.

Q. How long did that picketing continue?

A. Approximately a month.

Q. How many pickets were there, say at the beginning of the picketing?

A. I saw about fifty individual different men at different times.

Trial Examiner Danaceau: The question is how many were there at the beginning, the first day?

The Witness: I judge there were between thirty and forty men the first day.

Q. (By Mr. Smoyer). Were they all your former employees?

A. Yes, sir.

Q. Now how long did the picketing by them continue?

A. Oh, for about two weeks.

Q. About two weeks, and then how many picketed?

A. Well, it varied. Some days it would be

Testimony of Hilliard J. Sands

578 more than other days. I never counted them. I judge there would be at least ten men around the plant grouped together at all times.

Q. Now during that period of time, that is commencing August 21st and go down until such time as the picketing had practically ceased, was there any interruption of incoming deliveries from out of the state?

A. No, sir.

Q. Were there any interruptions of deliveries, local deliveries?

A. No, sir.

Q. Was there any interruption of your shipments?

A. No, sir.

Q. State whether or not you filled the orders that you received?

A. We filled every order and I know of no cancellation.

Q. Did you fill them promptly with respect to their delivery dates?

A. Yes, sir.

Mr. Witt: What was the last question?

(Last question read by the Reporter.)

Q. (By Mr. Smoyer). I intended to inquire whether that went on from August 21st down to the present time?

Trial Examiner Danaceau: Is this with reference to interruption of deliveries?

Q. Yes.

579 A. There has been no interruption.

Q. From August 21st to date?

Trial Examiner Danaceau: That applied to all forms of delivery from and to the factory?

The Witness: Yes, sir.

Q. (By Mr. Smoyer). Was there any material that you needed in your manufacturing that you needed and couldn't get?

A. No, sir.

Q. Were there any shipments that you made in the ordinary course of your deliveries that you couldn't make?

A. No, sir.

Q. Or were they delayed?

A. No, sir.

Mr. Smoyer: Will the Reporter please mark this Respondent's Exhibit No. 7?

Testimony of Hilliard J. Sands

Mr. Witt: We object to that.

Mr. Smoyer: We are not offering it as yet.

Q. (By Mr. Smoyer). I hand you Respondent's Exhibit 7 and ask you whether you had anything to do with the preparation of it, first?

A. Yes, sir.

Q. Now, what is it?

Mr. Witt: What did he have to do with the preparation?

Mr. Smoyer: First let him tell what it is so as to be clear in the record.

580 A. It is a record showing the carloads, carload orders we received and shipped from about May until August.

Q. Did you have anything to do, or what did you have to do with the preparation of that?

A. Well, I had supervision over the factory, and in that capacity it was my duty to see that these orders were filled promptly.

Q. I mean with reference to the preparation of this statement.

A. Oh, I helped one of the girls in the office to go over the invoices.

Q. Go over the invoices. Have you marked there all the carload orders that you received in that period?

A. The majority of them.

Q. You said the majority of them. And if they were omitted, it would be because you overlooked it?

A. Just because we overlooked them.

Q. Now, then, down to, we will say to the fourth item, it shows deliveries having been made within about a week excepting the second item there?

A. Yes.

Q. Now, after the first of June it shows deliveries postponed for some time. What was the occasion of that postponement?

A. The plant was shut down.

Q. The plant was shut down. Then we go down—

Mr. Stanley: Those are what, Mr. Smoyer, so
581 we get it into the record.

Q. (By Mr. Smoyer). That is orders received June 3rd, May 20th, 22nd, May 27th, June 3rd, June 1st, were delayed somewhat according to your statement; is that right?

A. Yes, sir.

Q. Now, then, the plant opened up on June 17th?

Testimony of Hilliard J. Sands

A. Right.

Q. Now your first order after June 17th is when?

A. June 19th—I mean June 29th. Pardon me.

Q. That was shipped how soon?

A. Shipped on the 9th of July.

Q. Your next order?

—A. July 13th.

Q. That was shipped when?

A. The 15th.

Q. The next one?

A. July 27th, was shipped July 30th.

Q. Next?

A. It was received July 10th and shipped July 11th.

Q. The next?

A. Received July 30th and shipped August 1st.

Q. The next?

A. Received July 17th and shipped on August 2nd.

Q. The next?

582 A. Received on July 31st and shipped on August 5th.

Q. Well, this is made up from the invoices?

A. Yes, sir; made up from the invoices on record at the plant.

Trial Examiner Danaceau: Is that the last shipment, August 5th?

The Witness: Yes.

Trial Examiner Danaceau: What bearing would it have on the case? They didn't shut down until August 21st.

Mr. Smoyer: It has this bearing. Down to the month of July and the first part of August, the orders were being filled promptly in spite of the fact that the plant working—the plant had been reduced, and in spite of the fact that the plant had been only working for three days a week.

Trial Examiner Danaceau: All right. Let it go in. Has this been marked as an exhibit?

Mr. Smoyer: Yes.

(The paper referred to was received in evidence and marked "Respondent's Exhibit No. 7, Witness Sands.")

Q. (By Mr. Smoyer). Now during the month of August you have one item there shipped the month of August; any other carloads shipped during the month of August, do you know?

A. I don't recall any.

Testimony of Hilliard J. Sands

Q. Do you have any knowledge of the back log of orders out there at the plant?

A. Yes, sir.

583 Q. Do you know what the state of that back log in July and August was?

A. Why through August and July it, of course—finally, or the last of July or first of August it disappeared.

Q. That is after July and August. How about the September situation?

A. Well, in September we had decided to raise prices, and for that reason orders started to pile in. In order to—

Q. In what time in September did that take place?

A. I think it was September 20th.

Q. September 20th. Now, how many men are now employed out there at your plant?

A. There are about forty-eight to forty-nine men.

Q. And how many of those are men who have worked for the Sands Manufacturing Company at one time or another?

Trial Examiner Danaceau: Well, just a minute. Of course, they are all working there.

Q. (By Mr. Smoyer). I mean prior to September this year?

A. There is a fair quantity of them, possibly twenty to twenty-five of them.

Q. Now, during the month of September, 1935, was there any delay or any interruption in shipments going out to your customers?

Trial Examiner Danaceau: He has already answered that question.

584 Mr. Smoyer: He has.

Q. (By Mr. Smoyer). What do you have to do, if anything, with the discharge of men out there?

A. I have complete charge of hiring and firing men.

Q. Did you ever discharge any employees out there because they joined the M.E.S.A.?

A. No, sir.

Q. Did you ever discharge any employees because they assisted the M.E.S.A.?

A. No, sir.

Q. Did you ever discharge any employees out there because they were represented by this committee?

A. No, sir.

Q. Did you ever discharge any employees out there because they were organizers?

Testimony of Hilliard J. Sands

A. No, sir.

Q. Did you ever interfere with their organizational activities out there?

A. No, sir.

Q. Do you ever restrain them from organizing?

A. No, sir.

Q. Did you ever exercise any coercion in respect to organizing?

A. No, sir.

Q. Is there any rule out there at the present time not to hire any M.E.S.A. members?

585 A. No, sir.

Q. And any M.E.S.A. member can be employed there if there is work?

A. Yes, sir.

Q. Has there been any refusal to bargain with their committee, with your present employees or with previous employees?

A. No, sir.

Mr. Witt: An objection; it is a conclusion.

Q. (By Mr. Smoyer). Has there been any refusal to meet with them?

A. No, sir.

Q. Have you ever refused to meet with this committee?

A. No, sir.

Q. Did you ever attempt to discourage them from joining the M.E.S.A. ?

A. No, sir.

Mr. Smoyer: Your witness. Wait a minute.

Q. (By Mr. Smoyer). How long in advance is it advisable for your machine shop—how much advance is it advisable for your machine shop to advance on the other departments?

A. Should be at least thirty days ahead of the rest of the departments.

Q. Now during June and July how far in advance was the machine shop actually?

A. At the end of July?

Q. Yes, sir.

586 A. It was about even with the rest of the shop. Took it as far as they could get it.

Q. Was the matter of preference or discrimination in favor of any of the members of A. F. of L. members ever discussed at committee meetings at which you were present?

Testimony of Hilliard J. Sands

A. Not a committee meeting.

Q. Not a committee meeting?

A. Oh, I will take that back. I beg your pardon.

Q. Well, was it?

A. Yes, it was discussed.

Q. When?

A. It was discussed after June 17th.

Q. And do you remember the occasion?

A. Why, the occasion was harassment of the A. of L. members.

Q. Who was present?

A. The committee, Garry Sands, and myself.

Q. What was said and by whom?

A. Well, we discussed the Carbecks and, specifically, we discussed the Carbecks.

Trial Examiner Danaceau: What did the management say and what did the men say?

The Witness: Well, I am trying to get the right answer. Specifically it was about two—let us see about washing up at the end of the day.

587 Q. What was that?

A. Well, the committeemen wanted to know why Carbeck was allowed to wash up five minutes before the rest of the factory.

Q. Yes?

A. And so at that time we told them that since they had brought up the proposition that Carbeck should not be privileged in any way and we would make a note that none of the men in the factory all would be allowed to clean up at any time prior to the whistle.

Mr. Smoyer: Your witness.

Mr. Witt: May we have just about two minutes?

Trial Examiner Danaceau: Yes, you may, and before we take this up we will take a two minute recess. I would like to say this, that though I dislike to have any evening sessions and Saturday afternoon sessions which I hope to avoid, unless we make more rapid progress we will have to do that. The case has lasted longer than we expected it to. I want counsel to have their questions ready so as to have them fired immediately. Now let us have a short recess.

(Recess had.)

Trial Examiner Danaceau: Proceed.

Testimony of Hilliard J. Sands

CROSS EXAMINATION

Q. (By Mr. Witt). Mr. Sands, how old did you say you were?

A. Twenty-eight.

Q. How long did you say you worked for the
588 company?

A. Thirteen years.

Q. Did I understand you to say that you are a high school graduate?

A. Yes, sir.

Q. And also a college graduate?

A. Not a college graduate.

Q. You didn't go to college at all?

A. Yes, sir.

Q. How long did you go to college?

A. How long I went to college?

Q. Yes.

A. Three years.

Q. How many years?

A. Three.

Q. That was during the day or night?

A. The last year was at night.

Q. Now you said, as I understand it, that was with reference to Jack Norman, you spoke to all the foremen and they said he was inefficient?

A. Inefficient.

Q. Will you give us the names of the foremen you spoke to about Jack Norman?

A. Frank Dolish, Ed McKiernan, George Carbeck, Junior, Frank Pansky, who was also a committee member at the time, and Bill Brandt.

589 Q. That is all you remember?

A. Yes.

Q. And all those foremen you spoke to gave their opinion and told you that he was inefficient?

A. Yes, sir.

Q. Did you ever ask those foremen with the exception of Carbeck and McKiernan, about the inefficiency of their other men?

A. Yes, sir.

Q. Which foremen did you ask about their men's inefficiency?

A. I asked Frank Dolish, Frank Pansky.

Q. Let us take one at a time. Dolish; was this after June 17th or before June 17th?

A. This was before June 17th.

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

22

38-99



Testimony of Hilliard J. Sands

Q. Did you ever ask Frank Dolish about any of his men after June 17th?

A. Yes, sir.

Q. About whom?

A. I beg to withdraw that. I didn't ask Frank Dolish.

Q. After June 17th?

A. No.

Q. When you asked him before June 17th, did you have any difficulty about getting information from him?

A. No, sir.

Q. What other foremen, if any, did you ask after June 17th about any of their men with the exception of Carbeck, Junior and McKiernan?

590 A. Charles Rudd.

Q. Let us stop with him. When did you speak to him after June 17th?

A. Immediately after.

Q. And about whom did you talk to him?

A. I talked to him about Hank Schilthorn.

Q. Did you discuss Schilthorn with him?

A. Yes, sir.

Q. Did you speak to Charles Rudd after June 17th about any others of his men?

A. Yes, sir.

Q. About which of his men?

A. William Simunek.

Q. Did you have any conversation with him about Simunek?

A. Yes, sir.

Q. Did you have any difficulty getting information from Rudd about Simunek?

A. No, sir; there was no difficulty.

Q. Anybody else that you discussed with Rudd after June 17th?

A. Not that I can recall.

Q. With each of the other foremen, did you discuss their men's inefficiency after June 17th?

A. Frank Pansky.

Q. Whom did you discuss with him?

591 A. Lou Meyers.

Q. Anybody else?

A. William Simunek.

Q. Anybody else?

A. No; that is all.

Q. Did you have a conversation about both of those employees?

Testimony of Hilliard J. Sands

A. Yes, sir.

Q. Did you have any trouble getting any information out of them?

A. No, sir.

Q. Now you said, as I understand it, that all your raw materials are delivered by the consignor's trucks to your plant?

A. Not all of them.

Mr. Smoyer: I didn't think he said it; he didn't say consignor's.

Trial Examiner Danaceau: He didn't use that expression.

Q. (By Mr. Witt). Better change it to shippers of raw materials that you obtain. Are they delivered to you by the trucks of the shippers?

A. No, sir.

Q. Some of it?

A. Yes, sir.

Q. Don't you mean merely that when you receive raw materials from the shippers in the immediate vicinity that they deliver that material by their own trucks?

A. No.

Q. What else do you mean by that?

A. I mean that there are consignors at distant points who use their own trucks.

Q. You mean trucks that they themselves own?

A. Yes.

Q. Are there consignors at distant points who don't ship by their own trucks?

A. Yes, sir.

Q. By who?

A. By truck and rail.

Q. Do they ship by rail F. O. B. your plant or their plant?

A. It all depends on returns.

Q. It may be one or the other?

A. That's right.

Q. It may be one or the other?

A. Yes.

Q. Do you know Edward McKiernan?

A. Yes, sir.

Q. What is his job in the plant?

A. His job is shipping clerk and my assistant.

Q. That makes him assistant superintendent?

A. Right.

Testimony of Hilliard J. Sands

- Q. As assistant superintendent or shipping clerk, he get paid on a salary or hourly basis?
- 593 A. He is on a salary.
- Q. You discussed the meeting of employees organized in the spring of 1934?
- A. Yes, sir.
- Q. Do I understand you that no member of the management was present at that meeting?
- A. That's right.
- Q. Do you remember whether McKiernan was present at that meeting or not?
- A. No; I never questioned him.
- Q. No. That was not my question. I asked you whether you remembered whether McKiernan was present at that meeting?
- A. No.
- Q. You don't know.
- A. I don't know.
- Q. You recall when the Government order was completed last June?
- A. Yes, sir.
- Q. Did I understand you to say that the company took on additional men for this Government order?
- A. Yes.
- Q. At the completion of this Government order, they were let go?
- A. Right.
- Q. Now will you explain to us how they were
- 594 let go, whether you told them individually or let go by posted notice on the time clock?
- A. They were told individually.
- Q. Who told them individually?
- A. Their foremen.
- Q. Their respective foremen?
- A. Yes, sir.
- Q. Did you yourself tell any of them individually?
- A. I might have.
- Q. Do you remember which ones you may have told individually?
- A. It would probably be in the storage department.
- Q. Any other department?
- A. I doubt it.
- Q. Are you sure there was no posted notice up at that time?
- A. Not revelant to which particular men were to be laid off.

Testimony of Hilliard J. Sands

Q. My question is if any notice was posted at all with respect to layoffs after the Government order was completed?

A. We do post notices. There may have been one. I don't recall any specific notice.

Q. If a notice had been posted, would it have been similar to the kind of notice you posted in July and August of this year?

Mr. Stanley: I object to that.

Mr. Witt: He said they did post notices.

Trial Examiner Danaceau: Whether it may have been similar is a speculative field. I don't think it
595 is pertinent to the issues.

Mr. Witt: Well, I will withdraw the question.

Q. (By Mr. Witt). Now, you stated you attended this conference at the end of the first strike at which Conciliator Rogers was present?

A. Yes, sir.

Q. At that conference there was a question of five allegedly inefficient men was discussed?

A. Yes, sir.

Q. Will you give us the details of that discussion? Who first proposed that they be discharged and not returned to work with the other men?

A. Harry Potter.

Q. Harry Potter proposed they should be discharged?

A. Yes, sir.

Q. The company didn't raise the question but he did?

A. No, sir.

Q. After June 17th you discharged Jack Norman, as you testified. Did you discharge any other employees that you recall after June 17th?

A. Yes, sir.

Q. Who did you discharge?

A. I don't recall their names.

Q. About how many?

A. I think there were about ten.

596 Q. About ten. Were all of them members of the M.E.S.A.?

A. I don't know.

Q. Do you recall any committee meeting that you had with respect—

Mr. Smoyer: Will you fix the time of those?

A. Fifteen days, within the fifteen day period after June 17.

Testimony of Hilliard J. Sands

Q. Those were all within the fifteen day period?

A. Yes, sir.

Q. Do you recall discharging any men that had worked more than fifteen days after June 17th?

A. No discharges.

Q. No discharges. When you said this morning that it was practically impossible to get a discharge no matter how inefficient the man was, you weren't talking out of your experience after June 17th, were you?

A. I would have to qualify any statement I made after that.

Trial Examiner Danaceau: What is your qualification?

The Witness: Well, that it has been my experience that it would be practically an impossibility to fire anybody.

Q. (By Mr. Witt). But you didn't have such experience after June 18th?

A. No; no experience.

Q. Do you know one of your employees by the name of James Hlad?

A. Yes, sir.

597 Q. Is he presently employed?

A. Yes, sir.

Q. Do you know whether or not he was a member of the M.E.S.A.?

A. He told me he was.

Q. Do you know whether or not he is now a member of the M.E.S.A.?

A. He is not.

Q. At any time since he came to work after you resumed operations in September, has he complained to you about being bothered by any of the M.E.S.A. members?

A. Yes, sir.

Q. When did he complain after September 3rd?

A. Oh, specific instances that I recall.

Q. Will you tell us about that?

Trial Examiner Danaceau: Let him first answer the question when after September 3rd?

The Witness: Within, I judge it would be within a week after September 3rd.

Q. (By Mr. Witt). Both occasions within a week after September 3rd?

A. I know the first instance; I am not sure of the second. I believe both were within a week.

Testimony of Hilliard J. Sands

Q. Will you tell us about the first one; what did he say?

A. He said that he saw three members of the pickets go up to his car and he was afraid to go up to see what they were doing himself, but when he saw them walk away, he immediately went up to his car and found that a hammer was missing. He then—he figured that a hammer was a little loss; he didn't pay any more attention that, but that night when he started his car he found out some bearings were burned out and when he investigated he found emery in his motor.

Q. Is that all he told you on the first occasion?

A. That is all he told me on the first occasion.

Q. Do you remember what he told you on the second occasion? To go back to the first occasion, did he name any of these three men he had seen at his car?

A. I think he mentioned their names; I don't remember.

Q. You don't remember any of their names?

A. I think Frank Pansky was one.

Q. Do you remember any of the others?

A. No.

Q. What did he tell you on the second occasion?

A. He said that on his way home—his home is out in Solon or Aurora, some village outside of Cleveland, he noticed that a car was following him. He noticed the occupants of the car and he recognized them as members of the M.E.S.A. union. He pulled to a stop in—I understand it was a hot dog stand some place, and he bought a newspaper and he imagined they must have passed him while he was reading the newspaper because when he went out he found they were up ahead of him and they tried to force him off the road.

599 Q. Is this while he was still stopping or before he stopped?

A. No. He was on his way home again, and they made several remarks to him, I imagine trying to—

Q. Never mind what you imagined.

A. Well, he said they were intimidating remarks.

Q. What were those remarks, did he tell you?

A. Well, he didn't state what those remarks were.

Q. What else did he tell you about on that day?

A. Then he continued home.

Q. Is that all he told you about it?

A. He said he finally lost them. He turned in a side road—I forget the details—and he finally lost them.

Testimony of Hilliard J. Sands

Q. Did he tell you who was in the other car?

A. He said he recognized Lada Jindra, Tony Moraco, and Charles Rudd. I believe that was all.

Q. Do you know an employee by the name of Dave Healy?

A. Yes, sir.

Q. Is he presently employed by the Sands Manufacturing Company?

A. Yes, sir.

Q. Has he been employed since you resumed your operations in the plant?

A. Yes, sir.

Q. Has he complained to you about being bothered by M.E.S.A. members?

A. He hasn't said anything to me that I recall
600 that happened after September 3rd.

Q. Do you know Rambessa, Charles Rambessa?

A. Yes.

Q. Is he presently employed?

A. Yes, sir.

Q. And has been since September 3rd?

A. Yes, sir.

Q. Has he complained to you about the M.E.S.A. members since September 3rd?

A. Yes.

Q. What was his complaint and when did he make it?

A. Merely that upon trying to enter the plant, intimidating remarks were made to him.

Q. Anything else?

A. No.

Q. Did he tell you who made intimidating remarks?

A. No.

Q. Mr. Sands, do you use any name plates on your products?

A. Yes, sir.

Q. Do you get those plates from Ohio or out of the state?

A. Both.

Q. About how many, do you know what percentage you get in Ohio and what percentage you get outside?

A. It would all depend upon the purchasing.

Q. What is your estimate of the different
601 percentages during the year?

A. Oh, I would say possibly seventy-five percent were purchased, or about ninety percent were

Testimony of Hilliard J. Sands

purchased outside of the state.

Q. About how many of those do you use in the normal course of a year or in the course of a normal month?

A. Oh, about, depending, of course, on the number of heaters we build, would average between thirty and fifty thousand.

Trial Examiner Danaceau: A year?

The Witness: A year.

Q. (By Mr. Witt). Do you know what the company pays for those?

A. Yes, sir.

Q. What does the company pay for those?

A. It all depends on which ones you are talking about.

Q. About those you get outside of the state?

A. We can purchase all of them outside of the state.

Q. I am talking about those outside of the state; you pay for those by the thousand?

A. Yes, sir.

Q. How much do you pay for a thousand?

A. I am still asking you which kind?

Q. Tell me which kind and how much you pay for it?

Mr. Smoyer: Is that material?

Trial Examiner Danaceau: I don't think it is material.

602 Mr. Witt: I think it is. It is in the so-called stipulation; possibly this item has been omitted and we want to show that the only place that could be is among the miscellaneous material and we want to show that and how much the company spends, and we want to show there has been a mistake as to the computation of the value of the miscellaneous materials. We are about to finish.

Mr. Smoyer: If the stipulation is not correct, it is not a correct statement.

Mr. Witt: It is not exactly a stipulation; it was what the company was supposed to produce.

Trial Examiner Danaceau: It is rather obscure to me, but I will permit a reasonable amount of that examination, hoping that it will be hooked up with something later on.

A. After sending out bids to different firms that manufactured these name plates in the state and outside of the state, I find out which was the lower bidder.

Q. No. I am not asking you how you do this bidding. I am asking you how much you paid for these

Testimony of Hilliard J. Sands

Trial Examiner Danaceau: What is the price you pay?

A. An aluminum plate which is two by two inches in diameter and about twenty-six guage, would cost about seventeen dollars a thousand.

Q. Is that the cheapest or most expensive of the name plates you get from other states?

A. Well, we buy name plates less expensive
603 than that.

Q. You buy some that are more expensive than that?

A. Very, very few.

Q. Do you remember how many employees were working in the machine shop before these layoffs in July and August; that is, how many were working in the machine shop before you laid any of them off in July?

A. Between fifteen and twenty.

Q. Between fifteen and twenty?

A. Right.

Q. Do you remember when most of those were laid off?

A. About the end of July.

Q. About the end of July. Old members, so-called old men working in the machine shop were not laid off at that time?

A. No, sir.

Q. They were laid off later on in August?

A. Yes, sir.

Q. I understood you to say this morning that you discussed the question of the machine shop during August with the committee; did you at any time during August tell the committee that the company wishes to employ some new men in the machine shop?

Trial Examiner Danaceau: Do you understand the question?

The Witness: Yes. I think we did; yes, sir.

Q. (By Mr. Witt). When was that, do you remember?

604 A. Well, that was in August; first part of August.

Q. First part of August?

A. No. Pardon me. That was about the middle of August.

Q. About the middle of August. That was when you told the committee that you wanted to employ new men in the machine shop. That was my question.

Testimony of Hilliard J. Sands

A. I didn't state it in those, just that—those words.

Q. What did you state?

A. I said it would be economical to run that department with a full crew of permanent employees in the machine shop.

Q. What did you want to do about it? What did you tell the committee that the company wanted to do about that situation?

A. We wanted to leave it up to the M.E.S.A.

Q. What did you tell the committee you wanted to do?

A. We told the committee we wanted to live up to Articles Five and Six in the M.E.S.A. contract.

Q. What did you tell the committee you understood those articles to mean?

A. That we could run the factory by the departments.

Q. Did you tell them that you wanted to take on new men for the machine shop?

A. It wouldn't have been necessary.

Q. (Trial Examiner Danaceau). Did you tell them or didn't you tell them?

The Witness: No.

Q. (By Mr. Witt). What did you want to do with respect to the machine shop at that time?

A. Run the machine shop with the men who worked in the machine shop.

Q. Does that mean that you would recall those men laid off in July?

A. When necessary; yes, sir.

Q. Does that mean—did you want to call them back at that time?

A. It would have been convenient.

Q. Did you tell the committee that you wanted to call these men back at that time?

A. I think we did.

Q. You aren't sure?

A. I am sure we did.

Q. Did the committee object to calling back those men at all?

A. Yes, sir.

Q. On what grounds did the committee object; did they tell you?

A. Yes, sir.

Q. What were the grounds?

A. Tony Moraco said—

Testimony of Hilliard J. Sands

Q. This was still late in August that you are talking about?

A. Yes. Tony Moraco—

Mr. Stanley: He said the middle of August.

A. This is in the middle of August. Tony
606 Moraco stated that the M.E.S.A. union would not permit the machine shop to run with any A. F. of L. men in the machine shop while the M.E.S.A. men were laid off.

Q. Well, what did he mean by that? Did he explain what he meant by that?

A. Well, it is perfectly obvious we couldn't run the machine shop with the crew that had been running the machine shop unless we hired back everybody else in the shop.

Q. Then you say that Tony Moraco on this occasion said that you can only call back the M.E.S.A. men and not the A. F. of L. men?

A. No; he said if we wanted to run the machine shop and run it with the men who were A. F. of L. men, we would have to take back all the men in other departments in order to do that, that is the M.E.S.A. men.

Q. In order to call back the M.E.S.A. men in the machine shop, he wanted you to call back all the other M.E.S.A. men that worked in other departments?

A. That is right.

Q. Do you have more men working in the machine shop now than you had in there before the layoff in July?

A. I don't think we have as many at this particular day.

Q. Did anything happen with respect to your orders after this layoff in the machine shop which made it necessary for you to take more men in the machine shop than you had before they were laid
607 off? This was in the month of August?

A. Yes, sir.

Q. What happened?

A. We had used up our bank of stock of finished heaters and finished parts for heaters and we also had received a certain amount of business, more than normal or more than was last year, due to the raise in prices.

Q. And then the plant was shut down more or less completely on the 21st; you kept the crew there?

A. Wait a minute. I said the statement we had more men now than we had then.

Testimony of Hilliard J. Sands

Q. Let me—

A. Do you understand? Repeat your question again, the previous one.

Trial Examiner Danaceau: Before we get too involved—when this added business came, when was that, after September?

The Witness: The 3rd.

Q. (By Mr. Witt). After September 3rd?

A. Yes, sir.

Q. It didn't come before September 3rd?

A. No.

Trial Examiner Danaceau: Now, just for my own information, this price was to go into effect at a future date and all orders coming ahead of that price would be at the old price?

608 The Witness: Yes, sir.

Trial Examiner Danaceau: That is why you had a large volume of business?

The Witness: Yes, sir.

Q. (By Mr. Witt). During the month of August, were you getting more than your normal business?

A. It was approximately an average for that month.

Q. Now, you said that when the men in the tank heater department were laid off, I believe you said on July 15th?

A. I judge it to be around that.

Q. The management talked to the men in the lunchroom?

A. Yes, sir.

Q. And I understood you to say that no members of the committee were present at that meeting?

A. No, sir.

Q. You don't remember Tony Moraco being there?

A. I didn't say—I don't recall him personally now.

Q. Do you remember Clarence Dusek being there?

A. I don't remember whether the committee was there or not.

Q. Before this meeting in the lunchroom, were you present at a conference between the committee and Garry Sands with reference to the same problem before this meeting in the lunchroom on the same day?

A. If there was such a meeting, I was present.

Q. Well, do you remember whether there was such a meeting before the lunchroom meeting?

609 A. I don't recall.

Q. You don't remember that meeting?

Testimony of Hilliard J. Sands

A. No.

Q. Now you said this morning that sometime this spring there were three employees who were complained about in the machine shop, Tony Avon, Paul Brandt, and Tony Moraco; is that correct?

A. Yes, sir.

Q. Was Tony Avon working in the machine shop this spring?

A. All those men that worked were working in the machine shop.

Q. Tony Avon?

A. Not permanently.

Q. Trial Examiner Danaceau: Was he in there this spring; Mr. Avon?

The Witness: At some time or other he was in the machine shop.

Trial Examiner Danaceau: You mean sometime or other in the spring?

The Witness: Yes.

Q. (By Mr. Witt). And I understood you to say that during May, 1934, George Carbeck, Junior complained about him. Had you sent him back to the machine shop despite the complaint of Mr. Carbeck?

A. When necessary, we had to do that.

Q. During the spring of this year when you got these complaints, did you talk to these men, Tony Moraco, Tony Avon, or Paul Brandt?

610 A. Yes, sir. I didn't talk to Paul Brandt.

Q. Did you speak to Tony Moraco?

A. Yes, sir.

Q. What did you tell him?

A. I talked to him about handling merchandise the way he was.

Q. Was that the complaint Carbeck, Junior, had made about him?

A. One of the complaints; yes, sir.

Q. What exactly was that complaint?

A. That complaint was that he threw valves up on the bench without regard to where they belonged and without regard as to whether they were delicate mechanisms or not.

Q. Did you speak to him about any other complaint during that period in the spring of this year?

A. Yes, sir.

Q. What else did you speak to him about?

A. I spoke to him—I just don't recall why I spoke

Testimony of Hilliard J. Sands

to him, but it was because he had passed some remark or had been joking with one of the men in the shipping department on the company's time.

Q. That is what you talked to him about?

A. I cautioned him, yes.

Q. During the time you talked to him about his work in the machine shop?

A. No, sir.

Q. Did you speak to him about his impertinence in the machine shop?

A. No, sir; left that to the foreman.

Q. Did you speak to him about his slackness in the machine shop?

A. No, sir.

Q. Isn't it true that sometime after June 17th, Paul Brandt worked in the machine shop?

A. He may have been. I doubt it.

Q. Isn't it true that he was working in the machine shop when he was laid off August 21st?

A. That may be true, but not while the department had a full complement of men.

Q. It may have been during that time he was working in the machine shop on August 21st?

A. Yes; after the layoff.

Q. After the layoff of the newer men you mean?

A. Yes.

Q. Now you said something about a request for the discharge of anybody who was not a M.E.S.A. member. Did I understand you to say that the committee had made that kind of a request to the management, this was to the management, "We want you to discharge anybody that is not a member of the M.E.S.A.?"

A. No; they never told us that.

Q. What did you mean by what you said this morning that they requested a discharge of anybody that was not a member of the M.E.S.A.?

A. I don't recall just in what relation to what that was brought up.

Q. Well, did they ever make such a request?

A. Not a simple statement such as that.

Q. Did they ever come to you and say, "We want you to discharge this man because he is not a member of the M.E.S.A.?"

A. No, sir.

Q. You say that the company discharged all but one of the men they spoke to you about. What was

Testimony of Hilliard J. Sands

that one that you didn't discharge, do you remember?

A. William Simunek. That was one of the five men we wanted to discharge?

Q. No. You misunderstood me. You said that they requested you to discharge a man who was not an M.E.S.A. member.

A. I said that? I don't think I did.

Q. Let me see if I can't help you perhaps this time. I am thinking about—perhaps this statement I am thinking about is the statement they asked you to discharge people who hadn't worked there fifteen days; isn't that it?

A. I don't recall ever making a statement such as that in any—

Q. Well, from time to time you got lists from the foremen of new employees who were not proving efficient?

613 A. That's right.

Q. And you got these lists before they worked there fifteen days?

A. Yes, sir.

Q. And they asked you to discharge these people?

A. I requested them.

Q. You requested them to give you a list?

A. Yes.

Q. And they would tell you who were inefficient?

A. Yes, sir.

Q. And they asked you to discharge those who were inefficient?

A. Yes, sir; that is implied.

Q. You said there was one of those that you were asked to discharge despite the fact that the foreman said he was inefficient?

A. Yes, sir.

Q. Who was that?

A. I think his name is Mason.

Q. You recall at the meeting in June shortly after the men came back to work on June 17th, you and Garry Sands called the committee in and told them that you were going to hire new employees. This is perhaps the first meeting after the men came back to work.

A. June 17th?

Q. Well, the men came back to work on June 17th; did they not?

A. Yes, sir.

614 Q. Thereafter, didn't you and Garry Sands

Testimony of Hilliard J. Sands

have a meeting with the committee at which you told them pursuant to the agreement you were going to hire some new employees?

A. That's right.

Q. When was that? Do you recall the exact date?

A. Well, we took on men immediately, so it must have been June 17th.

Q. June 17th that you talked to the committee. Did the committee make any objections to your taking on new employees?

A. Merely that they wanted to know—we had to explain the reason.

Q. Did you explain?

A. Yes, sir.

Q. What was the reason?

A. That due to the orders that were booked, it was necessary to take on additional men in order to get these orders out.

Q. You were behind on your orders at that time?

A. Yes, sir.

Q. That was because of the strike, the shutdown?

A. That's right.

Q. Now, besides asking you why you needed these new men, did the committee make any objection to your hiring new men?

A. Not that I can recall.

Q. Now, you answered a few questions before about this Respondent's Exhibit No. 7; is that right?

615 This is called carloads received and shipped.

A. Yes, sir.

Q. What do you mean by carloads received?

A. Sufficient heaters on an order that would make up sufficient weight on an order to be shipped to one destination in a carload.

Trial Examiner Danaceau: To fill a carload?

The Witness: That's right.

Q. (By Mr. Witt). Did I—I still don't understand. You received the heaters from another plant?

A. No. We received an order to make up a shipment.

Q. By carload you mean carload orders received and not carloads received?

A. That's right.

Mr. Smoyer: I think I wrote "order received" on top there.

Mr. Witt: That is right. That is all.

Testimony of Hilliard J. Sands

Trial Examiner Danaceau: Anything further?

Mr. Smoyer: If we may have a minute's time, we will have a witness here in a few minutes.

Trial Examiner Danaceau: There are one or two questions I would like to ask. I understand Mr. Simunek has been employed—for how long has he been employed?

The Witness: He has been employed over a period of years.

A. I just don't know how long.

Examination by TRIAL EXAMINER DANACEAU

616 Q. (By Trial Examiner Danaceau). Would it be more than two or three years?

A. He worked a number of years back, laid off, hired on and off.

Q. How about Mr. Ratchford?

A. Mr. Ratchford worked there one or two times that I know of previous to that.

Mr. Lodish: May I interrupt? What was the first name that you asked about?

Trial Examiner Danaceau: Simunek.

Q. (By Trial Examiner Danaceau). For how long a period of time?

A. Well, until either they did something that would cause us to discharge them.

Q. No. I am merely interested in the length of time?

A. That will be impossible for me to tell you. I would have to look up the records to see; possibly a period of weeks.

Q. Mr. Meyers, how many years has he been employed?

A. Mr. Lou Meyers, he has been employed over a number of years on and off; mostly off.

Q. And Mr. Schilthorn?

A. The same.

Q. When did you first have a union of any kind in your shop, this M.E.S.A. organization which I believe started in May, 1934; is that the first?

A. To my first knowledge, the first one.

Q. When did you first start the departments?
617 A. You mean when the subject was first brought up?

Q. When did you organize your factory into departments?

Testimony of Hilliard J. Sands

A. It has always been departments; the departments always existed.

Q. And when you would have a slack season, what would you do, transfer men from one department to another?

A. Both, and sometimes in slack seasons we would have to transfer the men.

Mr. Witt: I have a couple of other questions I would like to ask. The reason we haven't gone into all these five men that were employed is because this production payroll will speak for itself on that subject. Many times we could have gone into it but—

Q. (By Mr. Witt). Does the company keep records of the production in different departments; do you keep a daily or weekly record of different departments so that you would know, for example, how much was turned out in the tank heater department in June and July?

A. That isn't necessary.

Q. Why isn't it necessary?

A. The plant is not so large that one man can't keep it in his head.

Q. You know most of it?

A. Yes; I know how many heaters a crew could make and efficiently.

618 Q. You know how many heaters the tank heater department was turning out in the spring before the strike, how much a day?

A. Yes.

Q. How much?

A. Depending on the size it would be. You mean running a full crew?

Q. Running with the crew that were then running that, when they were full?

A. There is a difference there. You understand you have to qualify that by saying which crew.

Q. You remember the crew that was running with the department in April of this year?

A. No; I don't recall. I can say this though, you might ask me leading questions.

Q. I simply want to qualify it.

A. You may ask me how much they turned out with men switched from other departments.

Q. That is what I want to know. How much did they run with men switched from other departments?

A. Well, I would say about six hundred, what we call our No. 40.

Testimony of Hilliard J. Sands

Q. Is that a large heater or a small heater?

A. That is a small heater.

Mr. Smoyer: In what period of time, did you ask him?

The Witness: Eight-hour day.

619 Q. (By Mr. Witt). An eight-hour day. Was the tank heater department running with a crew made up with men from other departments?

A. Yes, sir.

Q. Before this strike. Do you recall how many the tank heater department turned out after the week of the strike, say in July?

A. I would say ten percent better.

Q. That they did about ten percent better?

A. You understand though that we very rarely can make a steady run of one heater all day long. You understand what I mean?

Q. I want you to take two comparable heaters before and after the strike?

A. I would say about a ten percent difference.

Q. That is when the crew was made up of new men they turned out ten percent more heaters?

A. They were more experienced.

Mr. Smoyer: Let the witness finish.

A. If you put a full crew in that, you left them there and were broken in and know their jobs, no doubt they would turn out more, twenty percent.

Q. Was that true in the tank heater department in July?

A. It would be true in any department.

Q. Would it be true in the tank heater department? They would turn out ten percent more than before the strike?

620 A. Yes, sir.

Q. Did they have any more men than before the strike?

A. No.

Q. Were there less men there?

A. Same number of men.

Q. The same number of men. How many, do you remember?

A. Well, I have to qualify that. There are eight men to make up the line, but we also needed at different times for incoming parts to place the material at the proper place. Of course, we don't want the men on the line to leave the line and run up stock.

Q. Well, you said—

Testimony of Hilliard J. Sands

A. So if we get jackets in, iron jackets—

Q. Never mind explaining. You said a minute ago that you wanted to qualify your answer. In view of what you just said, how would you qualify your previous answer? Would you say there was the same number of men in these departments for the previous time?

A. Yes.

Q. So you haven't qualified it?

Mr. Smoyer: Oh, he qualified it.

Trial Examiner Danaceau: What I am puzzled about is he had to qualify that answer as to service elsewhere. Was there any difference in the service in these two different periods?

A. The Witness: No, except what I want to say is that at time it is necessary to put two more men in that department temporarily for a short time.

Trial Examiner Danaceau: Did you put two men in there?

The Witness: Naturally, in both periods.

Mr. Stanley: He asked him first was there eight and he said, "I want to qualify that number of eight."

Trial Examiner Danaceau: No; it was in the second qualification.

Mr. Witt: Let him try to tell us.

Q. (By Mr. Witt). Would you say now that you had the same number of men working in the department during both periods?

A. Yes.

Q. Was Charlie Rudd foreman of this department during both periods?

A. Yes.

Q. Did John Palko work in this department during both periods?

A. Yes.

Q. You are sure you have no records that would show the production of the tank heater department during these both periods?

A. No, sir.

Q. You don't keep any records of the production?

A. No, sir.

Trial Examiner Danaceau: Anything further?

RE-DIRECT EXAMINATION

Q. (By Mr. Smoyer). Mr. Witt has asked you whether or not you talked to certain fore-

Testimony of Hilliard J. Sands

men about Schilthorn, Simunek, Meyers, and you stated that you had no difficulty in getting information from them concerning those men. Now, what information would you get from the foreman respecting Schilthorn?

A. All stated that the men were satisfactory at that time.

Q. Oh they did? Is that true of all the men, I mean the three, Schilthorn, Simunek and Meyers?

A. All but—there was quite a discussion about Schilthorn; didn't mind Charlie Rudd.

Q. A difference of opinion as to his ability?

A. No; just a discussion as to his qualifications and what we should do about him.

Q. This man Simunek in that hearing that they had after June 17th; do you remember how his case was disposed of?

A. Yes, sir.

Q. Will you tell us about that?

A. We examined his—

Mr. Witt: We don't believe that this witness has testified that there was a hearing in respect to Simunek.

Mr. Smoyer: I think he has.

Trial Examiner Danaceau: What he answers is in a sort of redirect and he may answer.

A. We discussed his case. We brought his name up as one of the men to be discharged for inefficiency and at that time the committee told us that we were
623 discharging him and that we had brought his name up for discharge because of his union activity, so in answer to that we dropped his name and didn't discuss him any more or discharge, to prove that we weren't unfair.

Q. And he went back to work?

A. And he went back to work.

RE-CROSS EXAMINATION

Q. (By Mr. Witt). Now, about this fellow Simunek, do you remember when he first began to work for the company?

A. You mean—

Mr. Smoyer: He answered that to the Examiner.

The Witness: In what period of time?

Q. (By Mr. Witt). The very first time he began to work for the company; wasn't it quite a few years ago?

A. Yes, sir.

Testimony of George Carbeck, Sr.

Government order or was he taken on again for the Government order last November?

A. He was taken on for the Government order.

Q. And then he was laid off after the Government order?

A. Yes, sir.

Q. And then he was taken on again late in the winter or early this spring?

A. Yes, sir.

Trial Examiner Danaceau: Anything further from this witness?

624 Mr. Witt: That is all.

Mr. Smoyer: That is all.

GEORGE CARBECK, SR.,

called as a witness for the respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Trial Examiner Danaceau: Give to the Reporter your full name and address and speak up please.

Q. (By Mr. Smoyer). Your name is George Carbeck, Senior?

A. George Carbeck.

Q. Senior?

A. Yes, sir.

Q. Where do you live, Mr. Carbeck?

A. 13313 Speck Avenue.

Q. How old are you?

A. Fifty-one.

Q. You have a trade?

A. Yes, sir.

Q. What is it?

A. Toolmaker.

Q. Where have you been employed?

A. At the present time?

Q. Yes.

A. Sands Heater Company.

Q. How long have you been so employed?

A. Twelve years.

625 Q. You have a boy?

A. What is it?

Q. You have a boy?

A. Yes, sir.

Testimony of George Carbeck, Sr.

Q. And his name is George Carbeck also?

A. Yes, sir.

Q. And he is also employed out there?

A. Yes, sir.

Q. He learned his trade under you?

A. Yes, sir.

Q. Now you were employed at Sands in April of 1934?

A. Yes, sir.

Q. That is, you were working there at the time?

A. Yes, sir.

Q. Do you remember some time in that month about the organizational activities of the men?

A. In April?

Q. Yes.

A. Well, I can't place that. That was just about the time of the first strike.

Q. No. This was last year?

A. Last year?

Q. Yes.

Trial Examiner Danaceau: Well, is there any dispute about what occurred in that first year?

626 Mr. Smoyer: No. I just want—

Trial Examiner Danaceau: Is there any dispute up until May 21st about it?

Mr. Smoyer: I just want to bring out that this man didn't join up.

Mr. Witt: That is agreed.

Trial Examiner Danaceau: That is agreed upon. Let us confine the testimony as much as possible to the matters in dispute.

Q. (By Mr. Smoyer). Now, what was your duty or what are your duties there at the Sands Manufacturing Company?

A. I am a toolmaker and I am also with the machine shop.

Q. What kind of tools do you make?

A. Why, all the dies, mostly all the tools. I make all the tools used in the machine shop; jigs, fixtures and so on.

Q. You make the tools and then they are distributed to the machines?

A. To the machines.

Q. And the workmen use those tools to manufacture the product with; is that about it?

A. Yes.

Testimony of George Carbeck, Sr.

Q. Prior to the organization of these employees into the M.E.S.A. Union, did you have any difficulties with them?

A. Yes, I did. They all stopped talking to me because I didn't join the union.

627 Q. I mean prior to that time?

A. No; I didn't.

Q. After that what was the difference?

A. Well, the difference was none of them would speak to me.

Q. None of them would speak to you?

A. Yes.

Mr. Witt: Are we on last year now?

Q. When did that start?

A. That started right after the organization.

Q. How long did that continue?

A. Continued all the way through.

Mr. Smoyer: Does that answer your question?

Mr. Witt: I think so.

Q. (By Mr. Smoyer). Who among the employees at that time did speak to you?

A. Why, Pansky was one of the boys I had a lot of connections with his work down there, really he had to speak to me about his work; still he complained about it. He got hell for speaking to me, and I said, "Why did you speak to me?" I said, "You didn't have to."

Q. Do you know Al Farrell?

A. Yes, sir.

Q. What was he?

A. He was with the boiler department.

Q. What did he have to do about speaking
628 to you?

A. He was one of the men that told them not to speak to me. I was ringing up the time clock one day and he told a man by the name of Jimmy Hlad not to speak to the Carbecks.

Q. H-l-a-d?

A. Yes, and he said, "They were a bunch of rats."

Q. You mean Jimmy Hlad?

A. Yes.

Q. Where did the men out there eat their lunch?

A. In the lunchroom.

Q. Where did you eat your lunch after this organization?

A. In the tool room.

Testimony of George Carbeck, Sr.

Q. Did you join the A. F. of L. Union?

A. When did I?

Q. Did you?

A. Yes.

Q. When?

A. In May, after the last strike.

Trial Examiner Danaceau: Just a moment. He said in May after the last strike. You mean in May?

Mr. Witt: He means the first strike.

The Witness: They had two strikes.

Q. (By Mr. Smoyer). Well, now, we understand that the first strike meant from May 21st to June 3rd, and the second strike ran from June 6th to June 17th?

A. Then it was after the second strike.

629 Q. After the second strike?

A. After the second strike.

Q. Now does your work take you out through the machine shop?

A. It does, down to the press room.

Q. During your trips through the machine shop, did you have an opportunity to see how the men are getting along with their work, observe them?

A. Yes, sir.

Q. Did you have an opportunity to see how men who weren't customarily employed in the machine shop did their work there?

A. That's it.

Q. Who in particular do you recollect observing in the last year?

A. I don't quite understand your question.

Q. Well, there were some men who were regularly employed in the machine shop?

A. Yes, regularly.

Q. From time to time men were transferred from the machine shop to other departments during slack seasons?

A. Yes, sir.

Q. Did you have an opportunity to observe how they performed their work in the machine shop?

A. Yes, sir.

Q. Who did you observe?

A. They were the men from the coil room.

630 Q. They were the men from the coil room?

A. When they were there, they seemed to lay down on the work. We didn't have trouble with our own men from the machine shop; as long as we got outsiders, we noticed the difference.

Testimony of George Carbeck, Sr.

Q. When was that?

A. Oh, that must have been after the first strike.

Q. After the strike. Now, can you name any of those men that came in from other departments?

A. Well, I don't know them by name. They were all from the coil room.

Q. They were all from the coil room. Do you know Charlie Rudd?

A. Yes, sir.

Q. Did you have any conversation with him? As to the—

A. Well, once or twice he came into the tool room.

Trial Examiner Danaceau: Just wait until the question is asked.

Q. (By Mr. Smoyer). Did you and he ever discuss the M.E.S.A.?

A. Yes; he did. He mentioned it several times.

Q. Can you fix the time of the conversation?

A. Why, it happened in the tool room.

Q. But when?

A. Well, I couldn't give you the right date of it.

Trial Examiner Danaceau: About when in relation to other events?

The Witness: It was right after the Government order when they were paying time and a half.

Q. (By Mr. Smoyer). Was the subject of discharge or firing any M.E.S.A. men discussed?

A. It was discussed with the company in there and of course, his core men were laying down on the job, and I mentioned it to Herbie and Herbie went in and what he talked about I don't know. Rudd came into the machine shop and he said, "You can't fire them." I said, "What do you mean? The men refused to work. What do you mean I can't fire them?" He said, "No; you can't fire them." He said, "Try to fire them and see."

Q. Do you know an employee by the name of Herrman?

A. What?

Q. Herrman, or Windy, he is sometimes called.

A. Windy; that is the same name if it is he.

Q. Did you ever discuss Windy or Herrman with the other foremen?

A. Well—

Trial Examiner Danaceau: Yes or no?

Testimony of George Carbeck, Sr.

The Witness: Yes, I did.

Q. (By Mr. Smoyer). What was he trying to do with Herrman?

A. Well, we was trying to get Mr. Herrman out of our department; he was talking; didn't do his work, would get two or three together and chew the rag.

Q. Did you talk it over with the other foremen?

A. Well, we mentioned it to Herbie Sands.

632 Q. To Herbie Sands. Were you in a discussion with the other foremen yourself?

A. No.

Q. You weren't?

A. Whenever we tried to send him to different departments, the other foremen didn't want him.

Q. They sent him back?

A. They sent him back.

Q. Did you try to discharge him?

A. No; we was afraid to.

Q. Are you acquainted with the rate, what the employees are paid out there by way of day work, piece work, or both?

A. It is all day work.

Q. Do you know Tony Avon?

A. Yes.

Q. Did you have anything to do with a comparison of his work with the work of a man by the name of Sweitzer in the valves?

A. Oh, yes; that was testing of valves.

Q. Did you have anything to do with that?

A. I was told—

Q. You were told by whom?

A. I was told by the assistant.

Trial Examiner. Danaceau: Did you have personal experience?

The Witness: No.

633 Q. (By Mr. Smoyer). That was your son?

A. That was my son.

Q. Did you know Simunek?

A. Simunek? Yes.

Q. He worked for you?

A. Yes; he worked in the machine shop.

Q. What was his efficiency in the machine shop?

A. Well, Simunek, I find he was a kind of steady man in the machine shop—what I mean here in the last year he wasn't—you know, I don't know them by the name. Is Mr. Simunek—

Testimony of George Carbeck, Sr.

Trial Examiner Danaceau: If the witness is here, he can point him out. Is that the man you had reference to (indicating)?

The Witness: Yes.

Q. (By Mr. Smoyer). He worked in the machine shop?

A. He worked in the machine shop.

Q. Did Ratchford ever work for you?

A. Ratchford? I don't know the name.

Mr. Smoyer: Well, the son probably knows more about it.

The Witness: Yes, the son will know.

Mr. Smoyer: That is all.

Trial Examiner Danaceau: Anything further?

Mr. Witt: Yes.

CROSS EXAMINATION

Q. (By Mr. Witt). Mr. Carbeck, did I understand you to say that you are a foreman of the machine shop?

A. Foreman.

634 Q. Isn't your son the foreman?

A. The son is assistant.

Q. The son is assistant foreman?

A. Yes, sir.

Q. When were you made foreman?

A. When they gave me the job, put me over them.

Q. This was when?

A. Three years ago.

Q. Put you over your son?

A. Yes.

Q. He was assistant foreman in the machine shop?

A. Yes.

Q. You get paid more than he does?

A. Oh yes.

Q. Now you said that after the strike there was some men that were transferred to your department from the coil room?

A. Yes, sir.

Q. Can you remember any of their names?

A. I wouldn't know their names.

Q. Do you remember any of their names?

A. I don't even remember their names, some of them.

Trial Examiner Danaceau: Do you know them by nickname?

The Witness: Some of them, I suppose, but I can't

Testimony of George Carbeck, Sr.

Q. (By Mr. Witt). But you don't remember
635 any of their names?

A. I wouldn't say I don't remember any of their names.

Q. What are some of their names?

A. If I hear the names mentioned, I can say.

Q. Al Farrell?

A. Yes.

Q. Was he in the machine shop?

A. He was the boss of the coil room; very seldom that he worked in our department. He did once.

Q. He did once?

A. Yes.

Q. Did you find fault with his work?

A. No; that was before we had any trouble at all.

Q. We are talking about a period after the strike?

A. I don't think Farrell ever worked after the strike.

Q. Just answer yes or no to my questions. They came back to work on June 17th of this year?

A. Yes.

Q. Did I understand you to say that it was after that date that men from the coil room worked in the machine shop?

Trial Examiner Danaceau: Now, speak up.

A. Did the coil room work in the machine shop after the strike?

Q. Yes.

A. I wouldn't say after the strike.

Q. It was before the strike?

636 A. It was before the strike.

Q. You don't remember anybody in the coil room working in the machine shop after the strike?

A. Yes, once in a while one or two would come up.

Q. From the coil room?

A. Yes.

Q. One or two?

A. Yes.

Q. Did Paul Brandt work in the machine shop?

A. Paul Brandt, he worked in the machine shop once or twice. He came up from the coil room and worked in the machine shop.

Q. This was after the strike?

A. This was after the strike.

Q. Mike Hudak?

A. Mike Hudak? I don't know.

Testimony of George Carbeck, Sr.

Q. Isn't he the fellow that got hurt last year in the shop? Do you remember that?

A. No.

Q. L. Nagy, did he work there?

A. Yes.

Q. After the strike this year?

A. Yes, I think after the strike.

Q. Did you complain about his work?

A. Well, I didn't. My son did, I guess.

Q. Your son did, but you never did complain
637 about his work?

A. No.

Q. Did you complain about Paul Brandt's work?

A. Yes.

Q. To whom did you complain?

A. We complained to Herbie; my son complained on lots of times.

Q. Did you ever complain about Paul Brandt to Herbie Sands?

A. No.

Q. Why was it your son always complained?

A. He has charge of that. When anything was wrong, he came in and told me.

Q. He was in direct charge of those. You didn't spend all your time there with the men?

A. No.

Q. He was with the men most of the time?

A. (No answer).

Q. You weren't with the men all the time?

A. (No answer).

Q. You are a tool maker?

Mr. Smoyer: Just a minute. One question at a time.

A. When anything was wrong, I looked it over.

Q. During the time, you didn't work with the men?

A. No; the tool room is right in the machine shop.

Q. You were separated from the other men, but you wouldn't know whether the men were doing their work badly?

A. No.

638 Q. Your son would know about this?

A. Yes; he would know.

Q. You said you had a talk with Charlie Rudd at one time?

A. Yes, sir.

Q. And he said you couldn't fire anybody if he was a member of the M.E.S.A.?

Testimony of George Carbeck, Sr.

A. He said you couldn't fire and I said, "Why what do you mean? You telling me I can't fire them? And he said, "No. You can't fire them. Try it."

Q. When was this that you talked to him? This was last year during the Government order?

A. Yes; right after the Government order.

Q. Now you said you talked to Herbie about Windy. That was sometime last year too; wasn't it?

A. Yes.

Q. That wasn't after the strike you talked to Herbie about Windy?

A. No.

Q. Did I understand you to say that you joined the A. F. of L. after the strike this year?

A. After the last strike.

Q. Were you a member of the A. F. of L. before that?

A. No; I was not before that. I was years ago.

Q. I mean when you were employed here?

639 Trial Examiner Danaceau: Answer so that the Reporter can get your answer. What was your answer to that question?

The Witness: No.

Q. (By Mr. Witt). How soon after the strike did you join the A. F. of L. this year?

A. It must have been three or four days after.

RE-DIRECT EXAMINATION

Q. (By Mr. Smoyer). On what floor of this plant is the machine shop?

A. On the second floor.

Q. How big a room is it?

A. Oh, it must be seventy-five foot square.

Q. And you say the tool room is in the middle?

A. It is connected right in.

Q. How is it separated from the machine shop proper?

A. It is separated by a wire screen.

Q. Was it possible for a party in the tool room to observe things in the machine shop?

A. Yes.

RE-CROSS EXAMINATION

Q. (By Mr. Witt). But you could never be able to tell whether the men were efficient or not?

Testimony of George Carbeck, Jr.

A. Not in that distance, but I could tell whether they were working or not.

Q. But if they were inefficient, you had to rely on your son?

640 A. Yes.

Mr. Witt: That is all.

GEORGE CARBECK, JR.,

called as a witness for the respondent, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Smoyer). Your name is George Carbeck, Junior?

A. Yes, sir.

Q. Where do you live?

A. 13914 Melzer Avenue.

Q. How old are you?

A. Twenty-seven.

Q. You are a tool maker?

A. Yes, sir.

Q. You learned your trade under your father?

A. Yes, sir.

Q. How long have you been employed at the plant of the Sands Manufacturing Company?

A. Well, it is about eight years all told.

Q. What is your present position at the time?

A. Machine shop foreman.

Q. Who is over you?

A. My father.

Q. You belong to a union at the present time?

A. Yes.

Q. You look at me and talk to the Reporter and we will get along good. Don't let these fellows
641 worry you. You belong to the union at the present time?

A. Yes.

Trial Examiner Danaceau: He answered yes.

Q. (By Mr. Smoyer). What union is it?

A. A. F. of L.

Q. What particular union is it?

A. Tool makers.

Q. Tool makers. And when did you join that union?

A. I believe in May.

Trial Examiner Danaceau: In May?

Q. (By Mr. Smoyer). In May?

Testimony of George Carbeck, Jr.

A. Yes.

Q. Was it before or after the strike?

A. After the strike.

Q. That would make it sometime in June; is that right?

A. My mistake.

Q. Is that so?

A. Yes.

Q. Sometime in June after the strike?

A. After the strike.

Q. Now what kind of machines do you have in your machine shop?

A. Oh, there is screw machines, presses, and tapping machines, and that is about all.

Q. Any lathes?

A. Yes, there is lathes in the tool room.
642 We have this one large lathe in the machine shop.

Q. Any milling machines?

A. Yes, milling machines; they were just put in recently.

Q. How many men were employed in the machine shop just before the strike in May of this year?

A. Oh, there must have been around eighty.

Q. I mean just in the machine shop?

A. In the machine shop?

Q. Under you?

A. Oh, I should judge around twenty.

Q. You judge around twenty. I am handing you what has been marked as Respondent's Exhibit No. 3 and ask you how many of the men whose names appear on that list were employed in the machine shop just before the May strike?

A. I will start from the beginning. Henry Meyer—some of them I am not so sure. There is really only five.

Q. Five?

A. That were—

Q. Five from this list?

A. Yes; that would be Hank or Henry Meyer and E. Stack, Frank Dusek.

Mr. Witt: What was that last name?

The Witness: Frank Dusek.

A. John Greely.

Q. That is five I guess.

643 A. I think so.

Q. Any more that you know of?

Testimony of George Carbeck, Jr.

Mr. Witt: That is four, Mr. Smoyer.

Mr. Smoyer: Just four; Brandt?

Trial Examiner Danaceau: Well, I don't think it is a matter of dispute.

Mr. Smoyer: All right.

Q. (By Mr. Smoyer). Now, these twenty men that were employed there just before the strike, the other fifteen had come to the Sands Company when?

A. I don't know just what you mean.

Q. Well, in this original list there were five men employed in the machine shop regularly?

A. Yes.

Q. Now, where did you get the other men who were in the machine shop just prior to the strike?

A. That was from the other departments.

Q. That is, some of them were transferred from the other departments?

A. Yes.

Q. Were any of the men that had worked there during the Government order?

A. Yes, I believe there were.

Q. Were they men that had been brought in especially for the first time on the Government
644 order?

A. Yes, they were.

Q. Did you have an opportunity to observe the efficiency of the men who were transferred to the machine shop from other departments?

A. Yes, I did.

Q. How did they perform in your department?

A. Well, the men I did have working for me would do their work all right, but when I got other fellows in there they would lay down on the job.

Q. Now to whom do you refer specifically?

A. Well, some were all right and some weren't.

Q. Can you give us the names of those who came into your departments from other departments and who didn't perform efficiently?

A. Well, in comparing to the way the other men did their work, some were very slow.

Trial Examiner Danaceau: What were the names of those inefficient men who came to your department? Can you give us those?

The Witness: I had one fellow, Tony Avon, testing valves and I had another fellow up to test valves and he tested more valves than Tony.

Testimony of George Carbeck, Jr.

Q. (By Mr. Smoyer). Do you know who this second fellow was?

A. Yes.

Q. What was his name?

645 A. Sweitzer.

Q. How many valves would Sweitzer test in the same space of time?

A. He tested a hundred and fifty in eight hours.

Q. How many would Tony test?

A. Ninety-eight.

Q. Did you talk to Tony about that?

A. Yes.

Q. What did Tony say?

A. He doubted my word.

Q. Did you prove it to him or did you call in Sweitzer?

A. Well, that fellow Dusek, he tested one hundred; that is one I called his attention to, and I believe he agreed I was right.

Trial Examiner Danaceau: Did Sweitzer know you were having a test made?

The Witness: I don't really think he did.

Trial Examiner Danaceau: Sure?

The Witness: I don't think he did.

Q. (By Mr. Smoyer). Was Sweitzer a so-called old man or new man?

A. He was a new man.

Q. When was he hired?

A. I believe it was during the Government order.

Q. During the Government order. And Avon was an old man, was he?

A. No; he is not an old man. He is a young
646 man.

Q. I mean—withdraw that. Put it this way. Was he among the original group?

A. Yes, an old man.

Q. Where was he customarily employed?

A. Why, he had been working there all the time.

Q. In what department.

A. The valve department.

Q. Is that part of the machine shop?

A. No. It is testing valves in the assembly department.

Q. What is the process of putting bi-metals on valves?

A. There is a certain lathe you put it on and if

Testimony of George Carbeck, Jr.

you put it on the opposite way it will bend and won't open the valve up, won't open at all.

Q. Did you have any man after the strike who did that?

A. I did have one fellow there putting on backwards.

Q. Do you know what his name was?

A. Yes; it was Mike.

Q. Do you know his last name?

A. No. I don't recall it.

Q. Do you know whether or not he was a M.E.S.A. member?

A. I believe he was a M.E.S.A. member.

Q. Now tell us his experience?

Mr. Witt: We don't want to object to it, but we have no way of telling who he was talking about.

647 Trial Examiner Danaceau: I was going to suggest finding out who he is.

Mr. Smoyer: The only Mike I heard of was Mike Hudak in this testimony.

Q. (By Mr. Smoyer). Was it Mike Hudak?

A. Yes.

Q. Is Mike Hudak here?

Mr. Smoyer: Let him stand up if he is here.

(Mike Hudak stands up.)

Q. (By Mr. Smoyer). Is that the man (indicating)?

A. Yes.

Q. Now will you relate the experience?

A. Well, I was showing him how to put the bi-metals on and he told me his little son could put it on and he didn't pay any attention to how I showed him and he put it on upside down, and when I came back he was putting them upside down.

Q. He paid no attention to the way you told him; is that right?

A. That's right.

Q. Do you know Tony Moraco?

A. Yes.

Q. Did you ever have any trouble with him?

A. Well—

Q. Answer yes or no?

A. Yes.

Q. When was that?

648 A. Well, I repeatedly told him to keep the bench clean and he ignored me every time I told

Testimony of George Carbeck, Jr.

onto the bench. When I told him one time that I would throw the valves out of the window if he threw them on the bench, he seemed to have a chip on his shoulder. He asked me what I said and he wanted it repeated, so I repeated it and he did at first and then he threw them on the machine shop floor to disturb the men, threw them in the corner and the men jumped.

Q. Did you ever have him work on chains?

A. I did once.

Q. How did he handle that job?

A. Well, he sat down and took it easy and broke them up.

Q. Is that a job that is ordinarily performed while the workman is sitting?

A. No; usually stands up and stretches the chain across the vise and splits them up.

Q. But Tony was sitting down?

A. Yes.

Q. Now how frequently were men sent up to you from other departments?

A. Well, there was, whenever work was slack in other departments I usually got them up in the machine shop.

Q. Sent up to you?

A. Yes.

649 Q. Were they efficient in your department?

A. Well, some were and some weren't.

Q. They were all paid day work?

A. They were all paid day work.

Q. State whether or not the employees out there, that is the majority of them spoke to you?

A. No; they had nothing to do with me.

Q. Where did you eat your lunch?

A. I ate it right in the tool room.

Q. You ate it in the tool room with your father?

A. Yes.

Mr. Smoyer: Your witness.

CROSS EXAMINATION

Q. (By Mr. Witt). You say men would be transferred to the machine shop from other departments?

A. That's right.

Q. And how long did you say you worked for the company?

A. Well, all told it must have been seven years.

Q. Seven years you worked for the company?

Testimony of George Carbeck, Jr.

A. Yes, sir.

Q. How long during that time have you been a foreman of the machine shop?

A. It will be three years in January.

Q. What was your title or your father?

A. What was it?

650 Q. What was his title? You were called foreman?

A. Yes.

Q. What was he, assistant superintendent or—

A. You mean right now?

Q. I mean right after the strike?

A. He was always over me in the machine shop.

Trial Examiner Danaceau: The question is what was his title?

Q. (By Mr. Witt). You were called foremen?

A. Yes.

Q. He also was called a foreman?

A. Yes.

Q. You were both foremen?

A. Yes, sir.

Q. How long have you been a foreman in the machine shop?

A. Three years.

Q. During that time, men were always transferred from other departments to your department?

A. Yes, sir.

Q. Sometimes a man wouldn't do so well because he came from other departments?

A. Yes, sir.

Q. Now you said that before the strike you had about twenty men and five of those were old men and that the other fifteen, some had worked during
651 the Government order. Now you also said that some of those laid down on the job; do you remember who they were? Their names or their nicknames?

A. No.

Q. You wouldn't remember any of their names?

Trial Examiner Danaceau: He hasn't answered the first question yet.

The Witness: Well, I did say once who I found out laid down on the job.

Q. (By Mr. Witt). Who was that?

A. That was Tony Avon and Tony Moraco.

Q. Now you said—you didn't understand my ques-

Testimony of George Carbeck, Jr.

tion. You said that before the strike you had about twenty regular men in the machine shop?

A. Yes.

Q. And five of those were old men, Hank Meyers, Charlie Dusek, Stack, Greeley, and one other old man. The rest of the men were new men taken on during the Government order?

Trial Examiner Danaceau: No; he said they were from other departments and some new men.

Q. (By Mr. Witt). From other departments and some new men, and you said that these men from the other departments were laying down on the job. Who were they? Do you remember those that came in? You did tell us about Tony Avon.

A. Yes.

Q. Do you remember any others?

652 A. Well, practically all that came in.

Q. They all laid down on the job?

A. Yes, sir.

Q. You mean whenever somebody came from another department to the machine shop, he would lay down on the job?

A. That's it.

Q. Why was that?

A. Gosh, I don't know.

Q. Was it because they didn't like you maybe? Do you know that?

A. Well, it seems to me as they were afraid to clean up their work.

Q. What?

A. It seems to me that they were afraid to clean up the work.

Q. They were afraid to clean up the work?

A. That's the way it looked to me.

Q. Why were they afraid to clean up the work?

A. I suppose they thought maybe they wouldn't work so steady.

Q. Was that always the case during the three years that you were foreman, whenever you got men from other departments they would lay down in your department?

A. I guess it was.

Q. It was always like that when a man would come from another department and this wasn't his work?

A. I had trouble right from the beginning.

653 Q. This began three years ago when you were made foreman?

Testimony of George Carbeck, Jr.

A. Yes.

Q. Now, say three years ago when this first happened, did you talk to Herbie Sands or Garry Sands about it?

A. Yes, sir; I did.

Q. What happened at that time?

A. Well, I called the fellows together once and told them to toe the mark, but it didn't seem to do any good.

Q. It didn't seem to do any good. This condition continued during the whole three years?

A. Yes.

Q. You said you joined the A. F. of L. in June of this year?

A. Yes, sir.

Q. Was that after the strike?

A. Yes, sir.

Q. You said you had a little trouble with Tony Moraco; do you remember when that trouble was?

A. All I—I couldn't say exactly.

Q. Let me try to help you. You said he did some work on chains?

A. Oh, yes, that was his last.

Q. Before they were laid off?

A. Before they were laid off.

Q. Did you talk to your father about this trouble?

A. No.

654 Q. Did you talk to Herbie Sands about this trouble you had with Tony?

A. Yes, I believe I did.

Q. You believed you talked to whom?

A. To Herbie.

Q. To Herbie about it. What happened after that? Were you there when Herbie came and talked to Tony about it?

A. Well, I never said anything to him. I never said he was laying down on the job. If I would say anything to the men, they would get nasty, so I didn't say anything about it, so I just told Herbie.

Q. So you just told Herbie?

A. Because I was foreman in name only. I couldn't do anything else so no use my doing it.

Trial Examiner Danaceau: You mean you didn't talk to the men about it. You talked to Mr. Sands?

The Witness: I know if I would talk to the men I wouldn't get any satisfaction anyway.

Mr. Witt: That is all.

Testimony of George Carbeck, Jr.

Trial Examiner Danaceau: Just a minute.

Q. (By Mr. Witt). Do you remember when the men were laid off this summer, what date it was that the old men were laid off?

A. No.

Q. You don't remember that?

A. No.

655 Q. Well, that was on August 21st when the old men were laid off. Now just before that did you want to take on new men in the machine shop?

A. No.

Q. Did you want to take on new men any time during August?

A. I didn't have anything to do with the hiring at all.

Q. That is not my question. Did you need some men in the machine shop during August?

A. Well, I could use them.

Q. You could use them during August?

A. I believe I could.

Q. Well, did you request the management for more men during August?

A. I don't think I did.

Q. You don't think you did. Do you remember when your men in the machine shop were laid off?

A. I guess it was August 21st.

Q. No. I was talking about all the old men. No before they were laid off, wasn't the machine shop closed down with the exception of you and one or two others?

A. No; it was not. It was running.

Mr. Witt: That is all.

Mr. Smoyer: That is all.

Trial Examiner Danaceau: Have you any other witnesses?

656 Mr. Smoyer: Not tonight.

(Thereupon, at 4:18 o'clock p. m., adjournment was had until 9:00 o'clock a. m. the following morning.)

Testimony of Edward McKiernan

SATURDAY, NOVEMBER 30, 1935

(The hearing was resumed at 9:00 o'clock a. m., pursuant to the taking of adjournment.)

EDWARD McKIERNAN,

called as a witness for the respondent, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Smoyer). Your name is Ed McKiernan?

A. Yes, sir.

Q. Will you spell it for the Reporter?

A. Edward M-c-K-i-e-r-n-a-n.

Q. Where do you live?

A. 140th Street.

Q. You are employed at the Sands Manufacturing Company?

A. Yes, sir.

Q. You have been employed there how long?

A. I judge about eighteen years.

Q. What are your duties now?

A. Shipping clerk.

Q. How long have you been thus employed?

A. As shipping clerk?

Q. Yes.

A. I judge on and off fifteen years.

Q. You are directly under Herbie Sands?

657 A. Yes, sir.

Q. In his absence you run the shop?

A. Yes, sir.

Trial Examiner Danaceau: Speak up so that the Reporter can get your answers.

Q. (By Mr. Smoyer). Say yes instead of nodding. We are interested in knowing whether you are on an hourly basis or a salary basis?

A. Salary basis.

Q. How long have you been on a salary basis?

A. I judge about ten years.

Q. Do you know Jack Norman?

A. Yes, sir.

Q. Did you know him while he was employed out there at the Sands Manufacturing Company?

Testimony of Edward McKiernan

committee and some officers with the Sands Manufacturing Company after which he was discharged?

A. Yes, sir.

Q. Now, on that same day, did you have a conversation with Mr. Norman after that hearing?

A. I had a conversation with him, yes.

Q. And where did that take place?

A. In the shipping room.

658 Q. Will you relate the conversation?

A. Well, I told him I was sorry we had to leave him go.

Trial Examiner Danaceau: Was that all that was said or was there anything else said?

The Witness: I told him I was sorry that I had to let him go, and if things picked up we would take him back again.

Q. (By Mr. Smoyer). Do you remember what he said?

A. He didn't have anything to say.

Q. Did you say to him, "There is a lot more work than you know of and I will get you back when we break this union up?"

A. No, sir.

Q. Did you say anything like that or words to that effect?

A. No, sir.

Q. Did you say anything to him about the union?

A. No, sir.

Mr. Smoyer: Your witness.

CROSS EXAMINATION

Q. (By Mr. Witt). Mr. McKiernan, did I understand you to say that—a minute ago, that you said to Jack, "When things picked up you can come back?"

A. Yes, sir.

Q. Were you letting him go at this time because things were slow in the shipping room?

A. Well, he was not really the man for the job in the shipping room.

659 Mr. Witt: I move that the answer be stricken. It is not responsive. I didn't ask him why he was letting him go. I asked him whether it was because things were slow in the shipping room?

Mr. Smoyer: You said it was slow in the shipping room.

Trial Examiner Danaceau: I will let it stand because it was coupled with him.

Testimony of Edward McKiernan

Mr. Witt: Things were slow. I am not saying the shop was slow; not that, he was slow in the shipping room.

Trial Examiner Danaceau: Read the question, Mr. Reporter.

(Last question read by Reporter.)

Trial Examiner Danaceau: You may answer that yes or no.

The Witness: Will you repeat that?

(Last question read by Reporter.)

The Witness: My answer was that he was not the man for the job, I believe.

Trial Examiner Danaceau: Well—

Mr. Witt: May I reframe the question? Strike out the question and both answers.

Q. (By Mr. Witt). You said a minute ago in answer to a question of Mr. Smoyer's that you told Jack when things picked up he would be called back to work?

A. He probably would come back again.

Q. When you said to him when things picked up, did you mean the work in the plant at this time
660 was at a low level?

A. No.

Q. What did you mean by "when things picked up in the plant" and he would probably come back again?

A. I meant by that that he wasn't the man for the work he was doing.

Q. Why did you tell him you would call him back when things picked up then?

A. Because in any other department he was more able.

Q. Did you tell him he was to be called back in another department?

A. No.

Q. Did you tell him he was more able in another department?

A. I didn't tell him that.

Q. Did you say anything about his working in other departments?

A. No, sir.

Q. When you said you would call him back, did you say he would be more able in other departments? Did you mean that?

A. I didn't mean that.

Q. You said he might be called back; you must have meant something by that?

Testimony of Charles Shuman

Mr. Smoyer: I object to that.

A. Well, I answered the question.

Q. When you said this to Jack that he might
661 called back, did he say he would not want to
called back?

A. No.

Q. He said nothing in response to that?

Trial Examiner Danaceau: Speak up. Don't shake
your head. What was your answer to the last question?

The Witness: No.

Q. (By Mr. Witt). Was anything said by either
you, by you or Jack, in this conversation about a union?

A. No.

Q. Did you have any other conversations with him
after he was fired?

A. Not in regard to work or anything. As friends
I would say yes.

Q. During these conversations you had with Jack
as friends, did you talk about the plant in any way?

A. Never.

Q. Or the union in any way?

A. Never.

Q. The union was never mentioned between you?

A. No, sir.

Q. That is neither the M.E.S.A. or the A. F. of L.

A. No.

Mr. Smoyer: One further question. Did you belong
to any unions, Mr. McKiernan?

The Witness: No, sir.

Mr. Witt: What was the last question?

662 (Last question read by the Reporter.)

CHARLES SHUMAN,

called as a witness for the respondent, being first duly
sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Smoyer). Your name is Charles Shuman?

A. Yes, sir.

Q. What is your address?

A. 13805 Speck Avenue.

Q. You are at the present time employed at the
Sands Manufacturing Company?

A. Yes, sir.

Testimony of Charles Shuman

Q. When were you employed first at the Sands Manufacturing Company?

A. During the winter of 1934.

Q. And where did you work during that period of employment?

A. In the machine shop.

Q. Had you had previous machine shop experience?

A. Yes, sir.

Q. Where?

A. Dall Manufacturing Company.

Q. Where else?

A. I took that sort of work up in high school.

Q. Which high school?

A. John Adams.

Q. You were employed at the time of the
663 Government order?

A. Yes, sir.

Q. How long did you work?

A. I worked there for about three or four months when the Government order was over and they began to lay off a few men and naturally I went with them.

Q. During that period of employment, did you join any union?

A. No, sir.

Mr. Witt: What was that last question and answer?

(Last question and answer read by Reporter.)

Q. (By Mr. Smoyer). During that period, were you requested to join any union?

A. Yes, sir; I was.

Q. Which union?

A. The M.E.S.A.

Q. Who requested you to join it?

A. A few fellows in the shop asked me.

Q. What was their names?

A. Tony Moraco, Lada—

Q. You mean Lada Jindra?

A. Yes, sir.

Q. Who else?

A. Charlie Rudd.

Q. Any others?

A. I don't believe I remember any others.

Q. To refresh your recollection, did Bill
664 Brandt request you to join the union?

A. No, sir.

Q. What did these men say?

A. Told me the M.E.S.A. was in the shop and if I

Testimony of Charles Shuman

didn't join the union I wouldn't stay there very long.

Q. Did they say anything further?

A. They said my job was not worth anything if I didn't join the M.E.S.A.

Q. You finally refused?

A. Yes, sir.

Q. After you refused to join the union, how did they treat you?

A. Never was very friendly with any of them, never did speak with them; just a few of us eat lunch together. We were friends. None of the older men.

Q. Did they help you at any time that you were in trouble?

A. No, sir.

Q. Tell us about it?

A. At one time I was bringing a barrel of couplings from the coil room and had them on the lathe; had to put them on a truck and a couple of fellows seen me, saw me doing it, I couldn't do it myself and saw me doing it and they didn't assist me in any way.

Q. Did they say anything to you?

A. No, sir.

665 Q. Did you notice any expression on their faces?

A. No, sir; just looked around, they glanced at me and I kept on with my work.

Q. Do you remember who those men were?

A. Yes, sir.

Q. Who were they?

A. Charlie Rudd.

Q. Charlie Rudd?

A. Yes, sir.

Q. Charlie Rudd was a foreman?

A. Yes, sir; of the tank heater department.

Trial Examiner Danaceau: Did you ask him to help you?

The Witness: No, sir; I just looked at them.

Q. (By Mr. Smoyer). Then when did you next come back to work?

A. I believe it was this last summer in June, I should think it was.

Q. After the strike?

A. Yes, sir.

Q. And you worked how long?

A. Until the latter part of July.

Q. And then you were laid off?

A. Yes, sir.

Testimony of Charles Shuman

Q. Then you went back to work again about September 3rd?

A. Yes, sir.

Q. Who called you back to work?

666 A. I received a telegram.

Q. From whom?

A. From Herbie.

Q. From Herbie?

A. Herbie Sands.

Q. Do you belong to any union at the present time?

A. Yes, sir, the American Federation of Labor.

Q. When did you join the American Federation of Labor?

A. It was just before, sometime in June or July.

Q. Was it before or after the strike in the middle of the summer?

A. It was in the middle of the summer after the strike.

Q. It was after the strike. Did any of the Sands tell you to join the A. F. of L. union?

A. No, sir.

Q. How did it come about that you joined the A. F. of L.?

A. Well, I belonged to the A. F. of L. before that in 1933.

Q. Where did you belong then?

A. At the Dall. Then when everybody told me to join and get all the seniority rights. Quite a few of the fellows thought it would be a good idea to have them join and get an opportunity to work along with the M.E.S.A.

Q. When you said that you saw they all had seniority rights, just what did you mean by that?

667 A. Well, they said that the older fellows were the ones that belonged to the M.E.S.A., really about thirty of them. They had worked there before; by belonging to the M.E.S.A. union they had seniority rights, and when the layoffs came, all the new fellows would be laid off when they came to work.

CROSS EXAMINATION

Q. (By Mr. Witt). That is regardless of their employment, you said?

Trial Examiner Danaceau: Let the witness answer the question.

A. I believe it was.

Testimony of Charles Shuman

Q. You said when Mr. Smoyer just asked you whether that was regardless of their employment and you said you believed that is what it was?

A. I believe that is what it was.

Q. Did they tell you at the time?

A. No, sir.

Q. Just answer the question yes or no.

A. No.

Q. None of the M.E.S.A. boys told you that?

A. They told me they had seniority rights in the shop.

Q. You said you went to John Adams High School?

A. Yes, sir.

Q. You learn much about working in the machine shop in that high school?

A. Yes, sir.

668 Q. What did you learn in that high school?

A. Learned to run the lathe, drill presses; that is most of the work in the shop was directly press work.

Q. What course was that in high school?

A. It was in the metal training.

Q. You said you were first employed in the machine shop on the Government order?

A. Yes, sir.

Q. Did I understand you to say that you worked three or four months at the time?

A. Yes, sir.

Q. Were you laid off when the Government order was finished?

A. Yes, sir.

Q. You said you belonged to the American Federation of Labor once before; had you ceased to belong?

A. I went to Michigan, I think, before I joined the union.

Q. Where did you work in Michigan?

A. In Grand Rapids, I worked at the Hupmobile and Reo cars.

Q. Did you join the union up there?

A. No, sir. They didn't have a union in that shop.

Q. You said that these M.E.S.A. people asked you to join the union and when you refused they were unfriendly with you?

A. Yes, sir.

Q. Had you been friendly with them?

Testimony of Garry Sands

669 never did speak to each other.

Mr. Witt: That is all.

Mr. Smoyer: That is all.

GARRY SANDS,

called as a witness for the respondent, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Smoyer). Your name is Garry Sands?

A. Yes, sir.

Q. You are the Garry Sands who testified first in this case?

A. Yes, sir.

Q. And you are the Secretary-treasurer of the Sands Manufacturing Company?

A. Yes, sir.

Q. How long has it been, your connection with the company?

A. 1913.

Q. 1913. Now, I am going to ask a few leading questions. In 1934, your shop was organized by the M.E.S.A.?

A. Yes, sir.

Q. And a committee was appointed and constituted to represent the members of the union in your shop?

A. Yes, sir.

Q. And all the dealings with the committee had been had with you down through 1934 and into 1935?

A. Yes, sir.

Q. On May 21st, 1935, you had a strike?

670 A. Yes, sir.

Q. Now, beginning about June 6th, 1935, you had another strike?

A. Yes, sir.

Q. Now in between those two strikes, there was a meeting between the officers of the respondent and the shop committee at which a Mr. Rogers, a Federal Conciliator, was present?

A. Yes, sir.

Q. Now at that committee meeting, will you state whether or not the discharge of any workmen was discussed?

Testimony of Garry Sands

Q. How did that discussion come about?

Trial Examiner Danaceau: I presume it was brought up by somebody. Do you want to know who brought it up?

The Witness: I brought up the subject.

Q. (By Mr. Smoyer). You brought it up. What did you say?

A. I said that now that the men were out on strike and we are trying to get the men back to work, let us get all our difficulties settled here before it is too late and the men are back to work again. I said there are five men or seven men reported to me as inefficient, and the question is let us get it settled now and I don't want them to come back to work.

Q. Did you receive any response to your demand on your part?

A. Well, there was quite a lot of discussion of who the five men were. Mr. H. J. Sands mentioned some and Harry Potter volunteered some information
671 that if he was running the shop and if he knew three or four fellows and if he was running the shop, he wouldn't have them in the plant.

Q. Did he name the three or four fellows?

A. I think he did.

Q. Do you remember what their names were?

A. I don't remember that conversation between H. J. Sands.

Q. What was the result of that conference with reference to the strike?

A. It was decided those men were not to come back to work.

Q. Any decision arrived at as to opening the plant?

A. It was decided to open the plant the following Monday; the meeting was on Saturday.

Q. These five men were not to come back to work?

A. Yes, sir.

Q. The plant opened on June 3rd?

A. Yes, sir.

Q. How long did it run?

A. It ran to Wednesday.

Q. Did those five men come back to work?

A. No, sir.

Q. Did you have any conversation with those five men during that period from June 3rd to June 6th?

A. I think about the second day one of the men came to the office. I don't know who it was.

Testimony of Garry Sands

672 A. I don't know which it was.

Q. Do you know what he said to you?

A. He said, "How was it, Mr. Sands, I am not back to work and the rest of the shop is running?" I said, "You don't know anything about it?" I said, "I am surprised at that, because we discussed your case with five others with Mr. Potter and the committee," and I said, "You better go and see Mr. Potter and your committee and they will tell you all about it," and that was all the conversation.

Q. And the plant closed and the men didn't go back to work until the 6th or 7th?

A. Well, the plant—they opened it. It was on Thursday morning they quit work.

Q. Yes. Were you advised as to the reason for their quitting work?

A. I never knew; no, sir.

Q. When did you find out?

Trial Examiner Danaceau: He said he never knew.

Mr. Smoyer: Well—

Trial Examiner Danaceau: Did you ever find out?

The Witness: I did find out; yes, sir.

Trial Examiner Danaceau: When was it?

The Witness: I found out finally the Friday before the plant was again re-opened.

Q. And unofficially?

673 A. What is that?

Q. If you found out unofficially?

A. Well, it came out, the people coming in and complaining about the five men.

Q. When did you first hear about that?

A. Oh, I would say about three times.

Q. Who told you?

A. I don't know who; it just came back.

Q. Did the committee come back to you?

A. I never saw the committee.

Q. When was it that you first saw the committee after June 6th?

A. I didn't see the committee during all the time they were picketing. I didn't see the committee until I went back to the saloon on a Friday before they came back to work and the committee came back at that time.

Q. Did you have a meeting with the committee for the purpose of negotiating an agreement?

A. Yes, sir.

Testimony of Garry Sands

A. Took place on Saturday morning, June 15th.

Q. June 15th?

A. Yes, sir.

Q. And the agreement has been introduced in evidence?

674 A. Yes, sir.

Q. Now, then, the men came back to work on the 17th of June?

A. Yes, sir.

Q. Now, then, after June 17th?

A. Yes, sir.

Q. Did you have any meetings with the committee?

A. Yes, I did.

Q. Who was on the committee at that time?

Trial Examiner Danaceau: Well, let us go on.

Q. (By Mr. Smoyer). All right. How many meetings did you have with the committee after that?

A. I used to have one a week, two a week, three a week, and towards the end it got to be every day.

Q. What was the subject matter of most of those conferences?

A. The subject matter of most of the conferences—that wasn't the immediate cause of the meeting; it was running by departments.

Q. Running by departments. Was there any particular department which was discussed particularly?

A. Well, at one of the meetings, the first meeting in reference to departments after we had discussions, was about the coil room, shutting down the coil room as a department.

Q. Was that the same—

A. I should say the tank heater department. I beg your pardon.

675 Trial Examiner Danaceau: That is not the same department.

The Witness: No, sir.

Q. (By Mr. Smoyer). It was the tank heater department?

A. Yes, sir.

Q. Now after that, I am trying to cover a lot of—

Trial Examiner Danaceau: Go ahead. We are getting along fine.

Q. (By Mr. Smoyer). That was shut down temporarily as a department; was it not?

A. All with the exception of the foreman.

Q. And the foreman was retained?

Testimony of Garry Sands

A. I had to retain him.

Q. Why?

A. Well, that was the whole cause of our trouble. I wanted to shut down the tank heater department, assembly department, but I knew it was impossible and I couldn't let Charlie Rudd go because I had to switch him to another department.

Q. What do you mean by the whole cause of the trouble? Explain that.

A. The whole cause of the trouble was we had quite a long discussion; I might say at the meeting with the Conciliator Rogers, and I was personally responsible for insisting that Paragraphs Five and Six be put into the contract of men working by seniority in departments, and it was finally agreed to that they operate under those conditions. We had in the past been
676 running our plant at times, letting off men and then putting men from one department to another and naturally I have been in direct charge of the whole operation during the operation of the company. We have been losing a lot of money in our business and I have devoted a whole lot of time, practically all of my time on this, and I have let the office go and I tried to use all my time in the factory to let things go, to see what was at the bottom of this, to see if the factory couldn't break even. I knew one basic cause was labor. I couldn't put my finger on it, so I decided to do it myself and find out. I found from my experience that the plant could not run economically as in the past by switching one man from another department and putting him in another, so when the strike came about and the negotiations came up for settlement I said, "Now, boys, we are here and there is one thing we have got to get straightened out and that is this subject of running by departments, the seniority rule. We are all together here in the meeting and let us sign up an agreement. We understand each other; no haggling, no monkeying around in the future." Before the strike there was always arguments, who was to run the department, who was to run it and how it was to be run; a continual harangue, and at this meeting we were to put it down in black and white just how the shop is going to operate, and I was instrumental in bringing that to a head, to try to stop any further cause of trouble or strife, and I wanted the plant to operate so there wouldn't be any haranguing, and I at that meet-

Testimony of Garry Sands

677 ing wanted it run by departments and they acquiesced and signed and everything was running by departments.

Q. That was the subject matter of these conferences?

A. That was the subject matter of these conferences.

Q. Now, is there anything else that was talked over in these conferences?

Trial Examiner Danaceau: You are talking about after they came back from the strike?

Q. (By Mr. Smoyer). After they came back?

A. Oh, they were—there was several matters about telling me practically how to run my business, which I resented.

Q. Explain that?

A. The men would come to me every time I would want to lay off some men and I would have to have a committee meeting and try to live up to the intent and spirit of the contract. The meaning was every time you had to lay off a man you had to have a hearing before the committee. Before I did anything, I tried to live up to the contract to my utmost extent. We had a strike, had our experience with it, and I said I didn't want to have any more trouble. And then when we got to these committee meetings and I wanted to put on some more men, somebody would say, "You've got enough stock here. You can't put on any more men." When I wanted to lay off some men, "You can't do this or that; you do this. You've got to take from one department to another." That is the way it was
678 working. It was working in such a condition I didn't know how to purchase material if I bought material. If I bought stock, I had too much stock. I was in a quandary. One man would say, "You got too many heaters in the stock room." It got so that I didn't know what to do. That is all. At the end they were telling me how to run my business.

Q. When did you first reduce the force after the strike?

A. I think around the middle of July.

Q. Was there a meeting about that?

A. Yes, I had a meeting about that.

Q. With the committee?

A. With the committee; yes, sir. We took on a lot of men right after the strike to catch up on orders we were behind on, and we took on a lot of men and we started catching up with our orders and about the

Testimony of Garry Sands

middle of July I explained to the men that we are catching up with a lot of orders and I could tell in advance what the prospects were as to the future probabilities. I was in contact with the customers and I was in a position to know how my stock—how much and what prospects would be from the correspondence in the office, and whether some customers anticipated a car-load in advance. It wasn't on the books, but I was in a position to know from the office correspondence. It got to the middle of July and a great many of the departments were caught up, so I had a committee meeting. Well, the committee meeting was held and the committee said—I told them then these other
 679 departments are caught up and we now shipped out all our orders and we had drained our stock of raw materials which we used up in the machine shop. I said, "I want to run the machine shop and lay off the other departments because the machine shop has to be five, six weeks ahead of the rest of the plant." They said they will see about that, "but if you are caught up in the rest of the departments you will have to lay off some men," they told me. Well, and I told them at that time I would like to run the machine shop and I possibly could help you out and run the other part of the factory three days a week. No, they said that it says in the contract that you can't run three days a week until all the new men are laid off in all the other departments and they kept taking that attitude until I said, "I can't do anything about it. I have got to run three days a week in some departments, and other departments lay off entirely."

Q. Will you point out, Mr. Sands, the provisions in the contract to which you referred?

A. Article Seven, That all new employees be laid off before any old employees in order to guarantee at least one weeks full time work before the working week is reduced to three days.

Q. When that contract talks about old employees, what group of employees does it refer to?

A. That refers to all men who were old employees before the Government contract.

Q. Specifically, does it refer to the thirty-
 680 one or thirty-two that signed that original petition?

A. Yes, sir. They were given clock numbers according to their—

Testimony of Garry Sands

Q. Trial Examiner Danaceau: Length of service?

The Witness: Length of service.

Q. (By Mr. Smoyer). Then you finally laid off all but the old employees along about the end of July?

A. Yes; I laid them off and I posted a notice on the clock that all men with numbers above so and so—those would leave just the original old men.

Q. That was numbers above thirty-one?

A. That's right.

Q. Was there ever a classification of men into departments?

A. Yes, sir; immediately after the strike I called Mr. H. J. Sands and I said, "Herbie, now we have got this contract so that there will be no arguments in the future. Let us post a notice on the bulletin board of all the classifications of all the shops; put the foreman's name down and the men's names under each department to show which department they were classified under, and if any man wants to make a complaint"—I think I told this at a committee meeting—they had to gamble when that department is busy can't change around.

Q. Was such a notice posted?

A. Yes, sir. It remained all during the time.

Q. Trial Examiner Danaceau: When was it posted?

The Witness: Around two days after June 681 17th, June 19th.

Q. Trial Examiner Danaceau: It remained there—I interrupted you.

The Witness: It remained up there until we opened up the plant again.

Q. Trial Examiner Danaceau: When was that?

The Witness: September 3rd.

Q. (By Mr. Smoyer). How many meetings of the committee did you have in which you discussed the matter of departmental operation?

A. It was practically—it started in again when we first started to lay off in our business first. From then on, in July, every meeting was concentrated on that subject.

Q. Now, coming down to the week of August 19th that would be Monday?

A. Yes, sir.

Q. Did you have any meetings with the committee that week?

A. Yes, sir; we did have meetings.

Testimony of Garry Sands

Q. When did you have the first meeting?

A. I thought we had—what week are you talking about?

Q. August 19th?

A. August 19th? That was on a Monday?

Q. Yes.

A. We had a meeting that Monday.

Q. Who was present?

A. The committeemen were present, H. J. Sands—

Trial Examiner Danaceau: And yourself?

682 The Witness: And myself; yes, sir.

Q. (By Mr. Smoyer). Will you relate the conversation that went on at that meeting?

A. Well, things got so bad that I saw we couldn't get anywhere just dickering around, and I called the committee in and I said, "You go up to your men and see if there is any solution to the problem to see if we can't get this thing ironed out. It is getting so that I can't continue operating our plant." We had a long meeting and I explained this all over to them. I said, "You go back to your men and see if they have any suggestions to offer and what we can do about it."

Q. Anything further said at that meeting?

A. I told them at that—their meeting that things were in such a shape, and I called attention to the fact they are breaking their contract and I am living up to it, and that all—they are not living up to their agreement; they are breaking their contract.

Q. Have you related all that conversation at that meeting?

A. And I told them to go and speak to the men and come back.

Q. Have you ever tried out switching from department to department?

A. Well, I was practically forced to do that after the July shutdown. When I laid off the other men and started to work on the three day week during

683 August, there were some departments entirely shut down and I did try out, as I said, previous to the strike and I worked one department from another.

Q. How did it work out, getting back to August?

A. It didn't work out.

Q. What do you mean by that?

A. Well, it didn't work out this way. I had to keep the men working in the factory and once I wanted to

Testimony of Garry Sands

shut down completely and I had to put men from department to another and I looked over some of the of the original thirty-one men that we had and I looked at their qualifications for particular work and I was satisfied that they wouldn't be suitable for that department—at least, I wouldn't want the chance to try to put them in on that particular job.

Q. Now, coming back to August 18th, you told the men to come back?

A. Yes, sir.

Q. When did they come back?

A. They came back on Wednesday morning 21st of August.

Q. Who was present at that meeting?

A. The same committee, H. J. Sands, and myself.

Q. What was the conversation?

A. Well, the conversation was they came back and they said they had no suggestions at all; that's the same as it was before. Then I started going over again and I said, "Boys, these things can't keep on this here." I noticed the three day week, not 684 practically working. When I worked on four days a week, I get less, less and less, than running the full department, and I called particular attention to one man, Lada Jindra, and I said, "What did you accomplish? You worked three days a week and you were over there; what did you accomplish?" He shook his head and said, "I don't think there was anything done." I said, "That is the way things are and it will last. You are violating the contract," and they said, "I said to them, 'What is there to do about it?'" I said, "There is nothing to do, no business," and they said finally, "Shut down the plant." I said, "If that is the final ultimatum, we will shut down the plant and they left and I told H. J. Sands to put a notice on the clock on August 21st.

Q. During your operation of the shop, did you notice any friction amongst the employees?

A. I didn't notice the friction. If there was any it was called to my attention, but I didn't interfere with it.

Q. Who called it to your attention?

A. Well, I think the Carbecks called it to my attention and I think several other people; in fact, I noticed once when I went up to the lunch room where I went up to Carbeck's room, I said, "George, we don't got a lunch room out there. Why don't you eat in

Testimony of Garry Sands

lunch room?" And then he started telling me about the lunchroom, "I can't eat out in the lunch room. The men won't talk to me. They make it unbearable. I can't eat in the lunch room. I eat in the tool room." That is the way I found out about the friction.

Q. Now, then, after this shutdown on August 21st, you had a conversation with Charlie Rudd; did you not, sometime during the end of August?

A. Yes, sir.

Q. Do you remember the occasion of that conversation?

A. I think he was working out to my brother's house.

Q. Did he work in the shop at all after August 21st?

A. Except on special occasions, I don't think he did. He might have been called after the shutdown, after August 21st, for a day on a particular job; might have been working there for a day or so.

Q. Well, you have heard him testify as to a conversation he had with you during the end of August.

Mr. Witt: What testimony?

Trial Examiner Danaceau: He has not stated what testimony it was. He merely asked him whether he heard him.

Mr. Witt: I meant that the day is wrong. He testified he had this conversation on September 4th.

Q. (By Mr. Smoyer). That was when the plant was running?

A. The plant was running, but he was not at the plant at that time.

Q. Was he—this didn't take place at the plant?

A. No, sir.

Q. Where did it take place?

686 A. It took place at my brother's house.

Q. Will you relate the conversation?

A. My brother was out of town and he was supposed to come back.

Q. By the way, what is your brother's name, for the purpose of the record?

A. Joseph M. Sands.

Q. Will you relate the conversation without going into too much extraneous matter?

A. The conversation was this, the last conversation I had with him I went out there and I instructed him. I had two other fellows to go out to his house and they

Testimony of Garry Sands

were to meet me at eight o'clock in the morning and they did and he was doing painting in the kitchen, and I waited out there for an hour with two men. Charlie Budd didn't appear, and I think I waited until nine thirty and I was getting pretty sore and I said, "What do you mean you didn't think I was going to be out here? I come up here with two other fellows to help you get your work done. I am here with two men, paying them their time and you come at this time. You get out of here." I said, "This will never do. You are through." And I took out the money from my pocket and paid him and that is all the discussion that was had.

Q. Did you discuss the operation of the plant at all?

A. No, sir.

Q. Did you say to him in answer to a question that the shop is not doing anything and you will
687 let him know?

A. No, sir. I told him he was through.

Q. Now you had a conversation with Albert Farrell. Farrell was a foreman?

A. Yes, sir.

Q. And this conversation took place while the plant was closed in August?

A. Yes, sir.

Q. Now, during the course of that conversation what if anything was said about Farrell taking a cut?

A. Well, I just happened to be out in the shipping room platform and I was there and I saw Farrell and I said to him—I knew the plant wasn't working—I said, "What are you doing here, Farrell?" He said, "I am just seeing Hamilton for a part for my stove." I told him that Hamilton wasn't here and we started talking about the plant and I said the condition of the plant—we had several committee meetings and didn't seem to get anywhere, and I wanted to see what he thought if I would take off several certain men and would take a cut, whether they would be satisfied with it. I didn't just make him a proposition, you understand, I just wanted to get his attitude towards what he thought.

Trial Examiner Danaceau: Will you state just what you said?

Q. (By Mr. Smoyer). What did you say?

A. I said, "Al, you know you are out in the
688 coil room and you are a foreman." For in

Testimony of Garry Sands

stance, I said to him, "Al, you know you are getting a lot of money but the reason you are getting that particular pay is because you are a foreman and key-man in that particular shop, in that particular department." I said, "Al, now for an illustration, if I want to put you in to work in another department, you aren't worth that money to me in another department and you are getting that money in that particular department for being a foreman and it is a lot of money," and I said, "I am not complaining as long as you are a foreman you are worth that much, but in these slack times if I had you to help McKiernan, I would give you forty cents an hour to help out; and if I put you in another department you aren't worth that much money." I said, for an illustration, "Supposing you were getting eighty cents an hour and I put you in the shipping room to help and you were getting forty cents an hour," I said, "Al, if you take a cut that some people have had off me, it will help you out and help the firm out, and in that way you will get steady work." I said, "You know there has been layoffs and now you are working three days a week." I said, "It would be to your advantage if you want to do that." I said, "For that, Al, I would like to use four or five fellows. There would always be room to use four or five men; naturally take these older men, guarantee the work provided they took the cut." I didn't make that proposition. I wanted to know how he would feel.

689 Q. What was the guarantee?

A. I guaranteed that if I made this proposition to him and these others that I would guarantee—I said—a full week of fifty-two weeks in the year, no shutdown for inventory or bad business.

Q. Was the M.E.S.A. discussed with Mr. Farrell?

A. No, sir; I didn't discuss the M.E.S.A. at that time.

Q. Did you say that you didn't know that the M.E.S.A. was trying to break you or not?

A. No, sir; I never mentioned that at all.

Q. Or words to that effect?

A. No, sir.

Q. Did Farrell come back after that?

A. If he did, I didn't see him.

Q. Then you had a conversation with Frank Dolish?

A. Frank Dolish; yes, sir.

Q. Along about the same time?

Testimony of Garry Sands

A. Well, that was maybe a day or two later.

Q. Maybe a day or two later. Did you make substantially the same proposition to him?

A. To Frank Dolish, I requested him to come in and I made him that proposition which I just related about Al Farrell, and on the shipping room floor.

Q. How many conversations did you have with Dolish?

690 A. Two.

Q. In the first conversation, did you suggest or propose a new wage?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Then what did Mr. Dolish say to that; that is, at the time of the first conversation?

A. He said, "I will talk the matter over," in the first conversation.

Q. Then was there any arranged time for a future meeting?

A. I think I told him to come back the following Tuesday.

Q. Did he come back?

A. Yes, sir.

Q. That would be September 3rd?

A. I think it was September 3rd.

Q. Going back to this first conversation, did you say in substance or in these words, "Well, Peewee, I like you and I had a happy thought; that is why you are here. If you want to work here, you will have to take a cut."

A. No; I didn't say the last. I did say, "Peewee, I like you."

Q. Did you say he would have to take a cut?

A. No, sir; I didn't say that. I just told the conversation just like I related to Al Farrell. I might have inferred that is what the gist of the conversation was.

691

Q. Peewee was Mr. Dolish's nickname?

A. Dolish's.

Trial Examiner Danaceau: Your answer is yes?

The Witness: Yes.

Q. (By Mr. Smoyer). You had a conversation with Stanley Linski?

A. Yes, sir.

Q. Anybody else present besides you and Mr. Linski?

Testimony of Garry Sands

A. Frank Pansky and the two of them come together.

Q. Let us withdraw these questions about Linski. Did you have that second conversation with Mr. Dolish?

A. Yes, sir.

Q. How did that come out?

A. Well, I says, "What did you decide about the proposition I made you the other day?" He said, "Well, I like the proposition, but I wouldn't come back to this work here unless Al Farrell and the rest of the boys come back here." I said, "Then that's out; I can't guarantee work for the whole crew, fifty-two weeks. I told you the proposition was only definitely for the four men I told you about."

Q. You didn't finish the question—I mean the answer. "I told you this proposition was only—"

Trial Examiner Danaceau: Only to four men.

The Witness: Only to four men.

Q. (By Mr. Smoyer). Only to four men.

692 Now, then, coming to Stanley Linski and Pansky, was there anybody else present?

A. And H. J. Sands.

Q. And yourself, and was the conversation, that conversation substantially the same as these two?

A. Yes, sir.

Q. That is on or about Friday, August 30th, I think it was, or the 31st? That was a Thursday, I think?

A. Yes, sir.

Q. No. Friday.

Trial Examiner Danaceau: That was about the same time of these other conversations; is that correct?

The Witness: Yes, sir.

Q. (By Mr. Smoyer). How many conversations did you have with Pansky and Linski?

A. I—each of them I told them to come back. Pansky came back separately and Linski came back separately; they didn't come back together. Both of them were together the first meeting.

Q. The conversation, the second conversation, with Linski, when did that take place?

A. I think that was on Tuesday, September 3rd or 4th, one of those days.

Q. Did you ask Linski to join the A. F. of L. Union?

A. No, sir. It was not discussed. He told me he couldn't—he just mentioned—no, the answer is no.

693 Mr. Witt: Is all that in the record?

Testimony of Garry Sands

Q. (By Mr. Smoyer). That is the first conversation or second?

A. You asked me about the second conversation.

Q. The second conversation. Did you ever ask him to join the A. F. of L. Union?

A. No, sir.

Q. That is Linski?

A. No, sir.

Q. Did you ever say that if he went to work for you the A. F. of L. would give him protection?

A. I—he was hesitant about coming back to work and he started a conversation about coming back to work, but he was afraid to come back to work.

Q. Yes?

A. Well, I said to him, "If you want to come to work, I don't see why you can't come back to work. You know the shop is running and there are a lot of men upstairs in the machine shop now and those fellows aren't afraid of work." And he said something like, "Well, if I come to work, well, those men they go back home and my wife is scared and they are likely to intimidate her, break windows, and things like that." I said, "Well, if you feel like that about it, there is nothing else to do about it. That is up to you. If you don't want to take the chance, that is entirely up to you."

694 Trial Examiner Danaceau: Will the Reporter read the question please?

(Last question read by the Reporter.)

A. And in the conversation—

Trial Examiner Danaceau: That can be answered yes or no, Mr. Sands.

Q. (By Mr. Smoyer). Or words to that effect.

A. I would say no.

Q. Now, in your first conversation with Pansky, Linski was there?

A. Yes, sir.

Q. Did you say to Mr. Pansky and Mr. Linski in that first conversation that the upkeep of the shop was too high and that you would have to cut wages?

A. No; I never stated that at all.

Q. Did you say to them or either of them that if they go to work on a certain proposition that they would get ten percent increase in three months, another ten percent in three months, and another five percent in three months, and after nine months it would be twenty-five percent over that period?

Testimony of Garry Sands

A. I think I told Frank Pansky that under the terms of the A. F. of L. contract which the men were under up in the factory, were operating under, that it provides for certain increases, and that if he came to work, why he would get those increases like those other men who are working under the A. F. of L. contract.

395 Q. Did you refer to any increases that were not mentioned in the A. F. of L. agreement?

A. I think I did in Pansky's case. I wanted to even up his wages with Frank Dolish's and I figured about this increase would put him on a par and put them all alike, because Pansky was getting less than Dolish and I made him the proposition of steady work and I wanted to put him on the same basis as Dolish.

Q. The increases in the A. F. of L. to which you referred to are the following: "All employees referred to in this article shall receive a ten percent increase in hourly wages after a period of thirty working days from the signing of this agreement. Any new employees employed during the life of this agreement shall receive the minimum wage scale which prevails for that type of work in the factory of the Sands Manufacturing Company for a period of ninety working days. After that time, his hourly rate shall be increased ten percent."

A. Yes, sir.

Q. "All employees under this agreement will automatically receive a five percent increase in hourly wages six months from the signing date of this agreement?"

A. Yes, sir.

Q. Now, then, after this talk about increases, did you say either to Mr. Pansky or Mr. Linski or both of them that all you have to do to get these increases is to drop the M.E.S.A. and join the A. F. of L.?

396 A. I never said that; no, sir.

Q. Did you say to either Mr. Pansky or Mr. Linski that you didn't want any of the old men back?

A. No, sir; I didn't.

Q. Now, I believe it has been testified that Mr. Pansky signed an application for membership with the A. F. of L.; were you there when that was done?

A. Yes, sir.

Q. Will you relate the circumstances?

A. Well, Pansky decided that he wanted to work in the plant and there was a considerable conversation

Testimony of Garry Sands

about intimidation or trouble when he starts to work and I told him, I said, "The men in the machine shop are working under the A. F. of L. agreement and you don't have to work under the A. F. of L. agreement." I told him that we have police protection in our plant and this meant that police guards would come to the plant and escort the men to the plant and in the evening escort them home—escort them in the morning and out in the evening. I said "all these men are just like you and they have—they are in their rights and working in the plant and they are working under a signed agreement with the A. F. of L." I said, "Those A. F. of L. men are getting protection," and he said, "What do you mean? What kind of protection?" Well, I said, "If you will look out the window, you might see some

A. F. of L. men and some cops in case anybody
697 starts any monkey business. The A. F. of L. would take care of their own side." So Frank

Pansky thought a minute and he said, "Can I join the A. F. of L.?" I said yes and he said, "What do you have to do to join the A. F. of L.?" And I said, "You got to sign." I said, "I don't know the details, but I guess you got to sign the A. F. of L. card." Frank Pansky said, "Do you have such a card?" I said, "No, but I will get you one." And I sent H. J. Sands to Carbeck to see if he had a card and he came back with a card and Frank Pansky signed the card.

Q. Now, you had a conversation with—let us see—you had a conversation with Al Ochs along about September 5th; is that right?

A. Yes, sir.

Q. Did you ask him to join the A. F. of L. union?

A. No, sir.

Q. You had a conversation with Mike Hudak; he is the fellow that was injured, I believe?

A. Yes, sir.

Q. That was about four weeks ago?

A. About four weeks ago.

Q. Did you ever tell Mike Hudak to drop the M.E.S.A.?

A. No, sir.

Q. Did you discuss the M.E.S.A. with him at all?

A. Why, I think in a conversation I did refer to the M.E.S.A.

Q. Well, just relate the conversation?

A. Well, Mike Hudak came into the office—

Testimony of Garry Sands

698 Trial Examiner Danaceau: Just relate the conversation.

A. He came in there and he asked me for a job and I said, "Mike, the plant is all filled up now." I said, "If you had come around right after the strike, right after we opened on September 3rd, you might have had an opportunity—I might have had an opportunity for you." But I said, "Now, the plant is all filled up and we don't need any men." I said—

Trial Examiner Danaceau: What was the reference to the M.E.S.A.?

The Witness: Oh then, when I told him I couldn't give him a job, he started to plead with me and he said, "Now, Mr. Sands, you know I am an old man, an old friend of yours, and I tried to work for you to help you." I said, "That is fine, Mike." I said, "Didn't I see you out picketing the plant on September 3rd?" He said, "Yes." I said, "Then are you such a friend of mine that you have to picket?" He didn't know what to say. I said, "Well, Mike, you know the M.E.S.A. has filed a complaint against us and we don't need any men now. Our plant is all filled up now." I said, "You wait until after the hearing which is going to come up very shortly." And that is the reference of the M.E.S.A. between us.

Q. Now when did you have the telephone conversation with Potter?

A. The day the plant opened.

Q. What day? That would be September 3rd?

699 A. September 3rd.

Q. Will you state that conversation?

(Conversation had off the record.)

—Mr. Smoyer: Will you read the last question please?

A. The morning of the strike, about eleven o'clock in the morning the telephone rings and Mr. Potter called me. There was a very short conversation.

Trial Examiner Danaceau: What was the conversation?

Q. (By Mr. Smoyer). What was the conversation?

A. He says, "Garry," he says, "what is this I hear about the men reporting the plant running?" I said, "That's right." I said, "The M.E.S.A. Union have broken their contract and we are now operating under the A. F. of L. signed agreement, signed contract." He flew up in the air. He flew up in the air and he says, "Don't you know that is a violation of the Wagner Bill," and started—

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

22

38-99



Testimony of Garry Sands

Trial Examiner Danaceau: Just what did he say?

A. He said, "Don't you know it is a violation of the Wagner Bill," and he answers this was so and so and so and so and so and so. I said, "I can't help it. The men have broken the agreement and we have signed an agreement with the A. F. of L." He said, "I am going to picket the plant immediately and file a complaint under the Wagner Bill," and that was all the conversation.

Q. Did he ask you if you would meet him?

700 A. No, sir; he didn't.

Q. Did he ask you if you would meet the committee?

A. No, sir; he didn't.

Q. Did you say to him that, "You, Potter, didn't sign the agreement and therefore the contract was no good?"

A. No, sir; I didn't.

Q. The plant was picketed when, in September?

A. On Monday the plant was open and there was always somebody around the plant; there were three or four. I don't think they were official pickets, but they came around the next day, around there, a full complement of pickets. The next day they had about maybe forty, fifty, or sixty pickets around the plant.

Q. These employees here, about fifteen of them, how many of them picketed the plant?

A. I think practically all these men were there at that time.

Q. Picketing?

A. Picketing; yes, sir

Q. This complaint alleges that there are about forty-eight in whose behalf this complaint has been filed. Would you say that most of them had been picketing? That is, picketing early in September?

A. Oh, yes, there had been more besides.

Q. Did the committee ever ask you for a conference?

A. Never had a conference to this day.

701 Q. Mr. Sands, during the time there was a committee, all the time that there was a committee out there in your plant, did you ever refuse to meet with them?

A. No, sir; I always did. In fact, I suggested a lot of committee meetings.

Q. Now on whose time were those meetings held?

A. Those committee meetings always were held at

Testimony of Garry Sands

the factory, on the factory time, during working hours.

Q. The men were paid straight time for this?

A. Yes.

Q. How long would it last?

A. Sometimes a half an hour, three quarters. sometimes fifteen minutes.

Q. Now you have referred to an A. F. of L. agreement. This was introduced in evidence. Is this the agreement now in force?

A. No, sir.

Q. Why not?

A. It was cancelled by mutual consent.

Q. When?

A. On September 10th.

Q. And who gave the consent for that, the A. F. of L.?

A. The business agent, Charles Milz and James McWeeney.

Trial Examiner Danaceau: Anything further?

Mr. Smoyer: Mark this Respondent's Exhibit No. 8.

Q. (By Mr. Smoyer). I hand you Respondent's Exhibit, which has been marked for the purpose of identification Respondent's Exhibit No. 8 and I will ask you what that is?

A. That is the agreement of cancellation of our contract between the A. F. of L. and the Sands Manufacturing Company.

Trial Examiner Danaceau: May I see that?

Mr. Smoyer: There is some notation on the back of that, a pencil notation.

Trial Examiner Danaceau: No; it is merely ink on there.

Mr. Smoyer: I offer it.

Trial Examiner Danaceau: It may go in.

(The paper referred to was received in evidence and marked "Respondent's Exhibit No. 8, Witness Garry Sands.")

Q. (By Mr. Smoyer). Mr. Sands, how many men out there, how many are employed out there now?

A. I think there is forty-eight or forty-five.

Q. Do you know how many of them belong to the A. F. of L. Union?

A. Oh, I think there is about—there were nineteen and then it was reduced to twelve that didn't belong to any union whatsoever.

Testimony of Garry Sands

Q. Well, now, that doesn't quite answer my question.
Trial Examiner Danaceau: You mean that all but nineteen are members of the A. F. of L. Union, or a but twelve?

Q. (By Mr. Smoyer). That would make—
Trial Examiner Danaceau: Make it thirty-two as members of the Federation of Labor and then later on increase it to thirty-nine.

703 Q. (By Mr. Smoyer). Yes.

A. Yes, I guess that is right.

Q. Now, Mr. Sands, have you had any trouble in operating the plant out there since September 3rd?

A. It has been a pleasure to have the plant operate the way it has been since September 3rd.

Q. You mentioned losses. What is the corporation's record with respect to losses over the last two or three years?

A. They have suffered a large amount of losses.

Q. Did you have a loss in 1933? Do you remember the loss, if any?

A. The loss in 1933 was around twenty thousand dollars.

Q. How about 1934?

A. I think it increased to forty; pretty near doubled.

Q. What are the apparent prospects for 1935?

A. The prospects are that we will still lose money this year.

Q. Now, Mr. Sands, is there any rule out there affecting the hiring of any men because of the union they belong to?

A. No rule like that.

Q. No rule like that?

A. No, sir.

Q. Was there any need for building up stock in the machine shop in August or July or the latter part of July, 1935?

704 A. (No answer.)

Q. What was the fact in connection with that in 1935?

Trial Examiner Danaceau: July?

Q. (By Mr. Smoyer). In July and August, what were the facts?

A. Well, after the strike there was quite a few orders; it had exhausted our parts that were finished in the machine shop.

Q. Would you say that there was a building up of stock needed?

Testimony of Garry Sands

A. There was no stock in the machine shop at all at that time.

Q. Mr. Sands, I think you said you had something to do with the discharge of men?

A. Yes, sir.

Q. As I understand it, you are the top, the last one?

A. That's right.

Q. Did you ever discharge or cause a discharge of any men because they belonged to the M.E.S.A.?

A. No, sir.

Q. Because they assisted the M.E.S.A. in their activities?

A. No, sir.

Q. Or because they asked to be represented in collective bargaining?

A. No, sir.

Q. Because they were organized?

A. No, sir.

Q. Did you ever interfere with their organizational efforts?

A. No, sir.

Q. Did you ever exercise any restraint upon
705 them in organizing or in managing their organization?

A. No, sir.

Q. Did you ever coerce them in any way?

A. No, sir.

Q. Respecting organizational activities or otherwise?

A. No, sir.

Q. Did you ever discourage membership in the M.E.S.A.?

A. No, sir.

Q. Now, all of your employees, Mr. Sands, are engaged in what kind of operation?

A. In manufacturing.

Q. Any of them engaged in transportation of your products from one place to another?

A. No, sir.

Q. That is outside of Cleveland?

A. No, sir.

Q. Since July 5th, I am just using July 5th as a terminus, for no particular purpose—

Trial Examiner Danaceau: Of 1935?

Q. (By Mr. Smoyer). Has there been any interruption in your business, that is, incoming shipments or outgoing shipments?

Testimony of Garry Sands

A. No, sir; we have had a continual daily shipment.

Q. Have you filled orders?

A. Yes, sir.

Q. Promptly?

706 A. As promptly as the ordinary business permits.

Q. No cancellations on account of delays?

A. No, sir.

Mr. Smoyer: That is all.

(Conversation had off the record.)

Trial Examiner Danaceau: Mr. Witt, will you state what you have said, as briefly as possible, into the record as to what the Government's request is for the mass witnesses?

Mr. Witt: The Government in this case is claiming that if an order is made finding that the employer is engaged in unfair labor practices under the statute, that that order should include a provision requiring the employer to pay back pay. We are not at this time prepared to put in evidence as to all employees on that issue. And further, inasmuch as it would be necessary to complete the record at a later date, we deem it advisable to have all the evidence on that issue taken at one time, that time being after the Board makes its final order in the case.

The Government also at this time moves that in its intermediate report that the Trial Examiner, if he finds that the employer is engaged in unfair labor practices under the Act, also find that the employees who were employees of the M.E.S.A. are entitled to back pay; and we move that the Trial Examiner in his recommendations include a recommendation that a
707 supplementary hearing be held to complete the record on the question of back pay.

Mr. Stanley: We want to offer all of the papers and documents and exhibits to which reference was made in cross examination of the Government witnesses.

Trial Examiner Danaceau: They may all go in. Is there anything further for the record which either side has in mind?

Mr. Witt: We want the Canadian invoices marked * as Respondent's Exhibit 1-B, to be included with the stipulation marked Respondent's Exhibit 1-A.

(The paper referred to was received in evidence and marked "Respondent's Exhibit No. 1-B.")

Testimony of Garry Sands

(Thereupon, at 11:00 o'clock a. m. a recess was taken until 1:30 o'clock p. m.)

AFTER RECESS

(The hearing was resumed at 1:30 o'clock p. m., pursuant to the taking of recess.)

GARRY SANDS,

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued)

Q. (By Mr. Smoyer). Mr. Examiner, I have just about two questions that I would like to ask Garry Sands.

Trial Examiner Danaceau: You may proceed.

Q. (By Mr. Smoyer). After ~~your~~ plant opened on September 3rd, how many of your old men, if any, came to you seeking re-employment?

A. I think there were a few that came about 708 thirty days after the plant was in operation, after September 3rd, and picketing had ceased.

Q. That would be about the end of September or the first of October?

A. That's right.

Q. Do you remember their names?

A. Why, I am not familiar with all of the men's names. I do remember Mike Hudak because I had some dealings with workmen's compensation, and I know a particular man by the name of Frank Pansky came to me at that time.

Q. Any one else that you recall?

A. I should say John Pansky; that is Frank Pansky's father.

Q. Any others that you recall?

A. Might have been two or three others, but I don't know who they are.

Q. Did you give them jobs?

A. No, sir; I didn't.

Q. And why didn't you give them jobs?

A. Why, I told them that the plant was all filled now and that we had a full crew of men in and if they had come around when we opened up the plant that possibly we could find room for them.

Testimony of Garry Sands

Mr. Smoyer: That is all.

(Conversation had off the record.)

Trial Examiner Danaceau: We will mark this Respondent's Exhibit No. 9 and we will include 709 that among the papers which you omitted, at the request of Mr. Stanley this morning.

Mr. Stanley: And being a draft—

Trial Examiner Danaceau: Being a draft of a proposed agreement made shortly—

Mr. Stanley: Prior to the drafting of the agreement of June 15th, 1935.

Trial Examiner Danaceau: That is correct.

(The paper referred to was received in evidence and marked "Respondent's Exhibit No. 3, Witness Garry Sands.")

CROSS EXAMINATION

Q. (By Mr. Witt). Mr. Sands, is Harry Gassell at the present time employed by the company?

A. Yes, sir.

Q. Was Harry Gassell employed before the strike in May, 1935?

A. Yes, sir.

Q. Do you recall in what department he was employed?

A. I don't recall.

Q. If I refresh your recollection, if I ask you if it was the machine shop, would your answer be yes?

A. I don't recall.

Q. Where is he employed at the present time?

A. He is now foreman of the coil department.

Q. Mr. Sands, I show you Board's Exhibit No. 4, which is an agreement entered into on September 3rd 710 between the Sands Manufacturing Company and the A. F. of L. and I show you Article Six of this agreement on Page Three and ask you to read Sub-Paragraph D of that paragraph?

Mr. Smoyer: Read it out loud.

A. "When hiring new help, no one who is related to a foreman shall be assigned to duty under such foreman."

Q. Is that the present policy of the company, Mr. Sands, not to assign relatives of a foreman to the department in which the foreman is boss?

A. We tried to do that, yes.

Testimony of Garry Sands

Q. You know Tony Moraco, Mr. Sands?

A. Yes, sir.

Q. Were you dissatisfied with his work before he was laid off?

A. He wasn't working for me.

Q. No. I mean you as Secretary-treasurer of the Sands Company?

A. From the reports that were told to me, he was dissatisfied.

Q. He was dissatisfied?

A. He was not satisfactory.

Q. He was not satisfactory?

A. No, sir.

Q. From those reports, would you have concluded that he was a faithful worker?

A. He was not.

711 Q. Do you remember in what department he was employed?

A. He was employed in the shipping room in the parcel post department.

Q. Since Tony was laid off, has the shipping room been combined with any other department?

A. The shipping room, when it was shut down in August, Ed McKiernan worked in his department all by himself.

Q. That is not my question. My question is did you combine the shipping department with any other department?

A. No, sir.

Mr. Witt: Will the Reporter please mark this as Board's Exhibit No. 8?

Mr. Smoyer: May I see that please? O. K.

Q. (By Mr. Witt). Mr. Sands, I show you what purports to be a letter on the letterhead of your company dated October 17, 1935, and ask you whether that is your signature?

A. Yes, sir.

Q. Mr. Sands, you testified that you were—

Mr. Witt: May I have a minute please?

Trial Examiner Danaceau: Yes. By the way, you better identify this letter that has been introduced, whether you introduced it or not.

Mr. Witt: The Reporter has it.

Mr. Smoyer: It has not been offered. You haven't requested it to be marked.

712 Mr. Witt: I requested that it be marked as an exhibit of the Board's.

Testimony of Garry Sands

Trial Examiner Danaceau: It is Board's Exhibit No. 8, Mr. Reporter.

Mr. Witt: And I want that it should be admitted in evidence.

Trial Examiner Danaceau: It may go in.

(The paper referred to was received in evidence and marked "Board's Exhibit No. 8, Witness Garry Sands.")

Q. (By Mr. Witt). Mr. Sands, you testified that you were present at this conference with Conciliator Rogers on May 31st?

A. Yes, sir.

Q. Did I understand your testimony to be that the agreement between yourself and the committee was that the five men in question were to be discharged without a hearing?

A. Yes, sir.

Q. Mr. Sands, I show you Respondent's Exhibit No. 3, which is a petition of the employees of the company, signed on April 21st, 1935, and ask you to identify the names of the watchmen on this petition?

A. Janousek. Well, if you will refresh my memory I will tell you the name of the other watchman.

Q. Gardell?

A. Gardell, yes.

Q. When this petition was presented to you, did you object to the inclusion of their names in this
713 petition? I say their names; I am not sure whether their names are on this.

Mr. Smoyer: Can't you see?

Mr. Witt: Withdraw the question.

Q. (By Mr. Witt). When this petition was presented to you, did you object to the inclusion of Janousek's name on this petition on the ground that he was a watchman?

A. Well, it was not a question of objection. They presented those names to me.

Trial Examiner Danaceau: Just answer the question. Did you object to it at that time?

The Witness: I can't answer it because it wasn't presented that way to me.

Q. (By Mr. Witt). No. My question didn't mean whether they asked whether you objected. When you got this petition, you noticed Janousek's name on this petition?

Testimony of Garry Sands

A. That's right.

Q. And noticing Janousek's name, did you go to the employees and say, "I object to the watchman's name petitioning for collective bargaining?"

A. I might have mentioned it.

Q. What did you say? Did you have any objection on the subject at all?

A. I might have suggested it; it might have been agreed after that to leave the man's name in. That is why I testified that way.

714 Q. You testified this morning that you saw Mike Hudak about four weeks ago?

A. Yes, sir.

Q. You had a conversation with him?

A. Yes, sir.

Q. In the course of the conversation, you called him up and called him by the name of Mike; did you not?

A. Yes, sir.

Q. That is the name you have known him by?

A. Yes; that is his nickname, I think.

Q. Did I understand your testimony this morning to be that the need for building up the stock in the machine shop arose late in July?

A. What was the question?

(Last question read by the Reporter.)

A. That's right.

Mr. Witt: I wish at this time to call the attention of the Examiner to the fact that the so-called production payroll which is already in evidence will show that there were a good number of layoffs in the machine shop late in July. The production payroll shows these layoffs come on July 27th, and I think there is some testimony to the effect they came on July 30th. I merely point that out because there is a discrepancy and I don't think it is a very material one.

715 Mr. Smoyer: I think that has all been explained.

Mr. Witt: Well, maybe.

Trial Examiner Danaceau: Proceed.

Q. (By Mr. Witt). Did I understand your testimony to be that during this three days of June 3rd, 4th, and 5th of this year, after the men came back after the first strike, you had no conference with the committee with respect to the five or the seven employees in question?

A. I don't think I testified that way this morning.

Testimony of Garry Sands

Q. Will you tell us whether you did or not?

A. I think I did have.

Q. When was that conference?

A. I think the day was on a Tuesday. On a Tuesday there was a meeting.

Q. May it have been on a Wednesday, Mr. Sands?

A. It might have been.

Q. Do you remember what took place at this meeting with the committee?

Trial Examiner Danaceau: Well, just a moment. On Tuesday or Wednesday; when in relation to other events?

Mr. Witt: The reason I haven't clarified that, Mr. Examiner, is that it isn't very material. It is either Tuesday or Wednesday, the 4th or 5th of June. That we already know. Perhaps you had something else in mind?

Trial Examiner Danaceau: You mean between the two so-called strikes?

716 Mr. Witt: Yes, this was. I think the record will show they came back on June 3rd and the second strike began on Thursday morning, June 6th, and so this is when they were back, those three days in June.

Q. (By Mr. Witt). Do you remember what happened at this conference with the committee?

A. Why, I think the committee came in and they made some reference about the five men not being back to work.

Q. What was this reference?

A. Well, I told the committee it was understood that before you come back to work on Monday, that these men were not to come back to work at all, and they were discharged, and I said there shouldn't be any dispute about it and the contract should be in my hands; it should be now.

Q. That is another—

Trial Examiner Danaceau: He is explaining.

Q. (By Mr. Witt). And what did they say in response to that?

A. He said these fellows now want a hearing.

Q. They now want a hearing?

A. Now want a hearing.

Q. They didn't say that at the conference with Conciliator Rogers on May 31st?

A. They didn't say that at all.

Testimony of Garry Sands

Q. Did you tell them during this conference that this arrangement had been made with Mr. Potter?

717 A. I told them evidently that Mr. Potter and the committee had doublecrossed these men and not explained this matter to them, and if they had not been doublecrossed they would have known about that.

Q. So it was at this time you said that they must have been doublecrossed?

A. Yes, I did say that; they must have been doublecrossed.

Q. What did the committee say to that?

A. They must have been dumbfounded. They couldn't answer that.

Q. Didn't one of the committee say that he misunderstood Mr. Potter when you are now saying they weren't to have a hearing?

A. He might have said that, but I disputed it if he did say so.

Trial Examiner Danaceau: Mr. Sands, please try to have your answers responsive to the questions, and if there is any further explanation you wish to make, you can make it.

Q. (By Mr. Witt). My question is if any member of the committee said what you now said that Potter agreed that they could be discharged without a hearing, you now misunderstood Mr. Potter?

Trial Examiner Danaceau: Was that their contention; any of the committee say that?

The Witness: They might have said that.

718 Q. (By Mr. Witt). Did I understand you to say this morning that after the men went out again on June 6th you really didn't know what the strike was about until the Friday when they came back again?

A. That's right.

Q. I think the calendar will show Friday, June 14th.

Mr. Smoyer: He said officially and unofficially he heard.

Mr. Witt: I will give the witness a chance to explain what he said. I am asking the witness what he said.

Trial Examiner Danaceau: Proceed.

Q. (By Mr. Witt). Well, the calendar will show it was June 14th. Did you unofficially or officially know what the strike was about before June 14th?

A. (No answer.)

Q. You knew what the men were striking about

Testimony of Garry Sands

A. No, sir; I didn't.

Q. When did you find out, at any rate?

A. Three days after the strike was in progress.

Q. You were secretary-treasurer of the company?

A. Yes, sir.

Q. These men were picketing your plant on Thursday?

A. Yes, sir.

Q. You made no effort to find out?

A. There was no committee meeting.

Q. You were simply waiting for the committee to tell you?

719 A. Yes, sir.

Q. You had a committee meeting and had it a day or two before that?

A. Yes, sir.

Q. Did you suspect that this strike move had something to do with that committee meeting?

A. I don't know.

Q. You don't know whether you thought that?

A. I couldn't say what reason they went out for; they gave me no notification why they were walking out. The plant closed on Wednesday night.

Q. Did you on Thursday, June 6th, try to find out why they were picketing the plant?

A. No, sir.

Q. Did you on Friday, June 7th?

A. No, sir.

Q. When was it you made an effort to find out if any?

A. It came to me unofficially that they were out because of these five men.

Q. How did you know unofficially?

A. It just came to me.

Q. You just waited for somebody to tell you why these men were out?

A. That's right.

Q. Mr. Sands, you testified that late in August and early in September after the plant resumed operations, you had conversations with several of your employees, amongst them Pansky, Linski, Dolish and Ochs and perhaps one or two others?

720 A. Yes.

Q. You had conversations with those people on your own initiative; you called them in to speak to them?

A. Yes, sir.

Testimony of Garry Sands

Q. And you selected each one of those people to talk with yourself?

A. Yes, sir.

Q. Now, why did you pick these particular people out; why didn't you also call some of the others?

A. Because I thought these particular men were good men and could be used for all around jobs.

Q. Does that mean that the rest of the force were not good men?

A. I couldn't speak for the whole rest of the force. I never—I knew these particular men. I watched their work.

Q. You knew these particular men individually?

A. That's right.

Q. You didn't know the work of the rest individually?

A. We had fifty men. I wasn't in direct charge.

Q. I am not asking you whether you knew all fifty. I am asking whether you knew the work of some of the others besides these four?

A. I might have known about some of the
721 others.

Q. Normally, if you wanted to open up your plant, and you wanted to build up a good force, you would inquire among your foremen, you would talk to your superintendent?

A. I couldn't have.

Q. Why couldn't you talk to them?

A. I had to take the seniority rule, who was next in line.

Q. I think you understand my question. This plant opened up after you resumed operations in September?

A. Yes, sir.

Q. It began during the time the A. F. of L. agreement was in effect?

A. Yes, when they returned the second time.

Q. Nothing to prevent you discussing your employees with your own management. Couldn't you go to Herbie Sands and find out whether E. Stack was a good employee?

A. Yes, sir.

Q. You made no effort to find out among your employees which was fit to offer this new deal to?

A. No.

Q. Why really did you pick these men out?

A. Because I just told you they were all around

Testimony of Garry Sands

men and I thought I could put them in any department and work well in any other department.

Q. Now, they were good all around men.

A. They were good all around men.

722 Q. You could use them in almost any department?

Trial Examiner Danaceau: He said so, yes.

Q. (By Mr. Witt). Was Frank Pansky a member of the M.E.S.A. committee before the layoff?

A. Yes, sir.

Q. You met with them quite a few occasions after they came back on June 17th?

A. He was a new member of the committee. I didn't know when he came in.

Q. He was a member of the committee before the layoff?

A. That's right.

Q. When you had all this trouble in July and August?

A. Yes, sir.

Q. And notwithstanding, you wanted Frank Pansky to come back to work?

A. Yes; I thought he would be a good man for us, yes.

Q. I hand you Board's Exhibit No. 4, which is an agreement which you made on September 3rd between the Sands Manufacturing Company and the A. F. of L., and did I understand you to testify this morning that that agreement was cancelled on September 10, 1935?

A. Yes, sir.

Q. Who suggested that be cancelled?

A. I suggested it.

Q. Why did you make that suggestion, Mr. 723 Sands?

A. Well, after that conversation with Harry Potter over the telephone, he told me there was going to be a filing of a complaint against our company, and then immediately afterwards the plant was picketed and I didn't know what would happen if the complaint would be filed upon us, and I thought to myself well what is the use of getting into more difficulties and have two contracts, that I thought it better if I will go down and see if I can get the one contract cancelled and let the other contract take care of itself. So I went down to the A. F. of L. and told them by position and they were going to make a complaint and in order not to

Testimony of Garry Sands

make it complicated, I wondered if they would cancel the contract.

Q. Who did you speak to?

A. Charlie Milz.

Q. Did you say they were filing?

A. I said they were going to file a complaint.

Q. They were going to file a complaint?

A. Yes, sir.

Q. Did you tell Milz your plant was being picketed?

A. Yes, sir.

Q. Did you tell them that is the additional reason for wanting to cancel the contract?

A. Yes, sir.

Q. The only reason you told Milz was a complaint was being filed in the Labor Board?

724 A. Yes, sir.

Q. What did Milz say?

A. He said, "It is satisfactory to me."

Q. He made no objection to it at all?

A. He made no objection to it at all.

Q. After you cancelled this contract, did you so inform your employees in the plant?

A. I think I told them at a later date.

Q. You believe you told them; you can't remember whether you told them or not?

A. I would have no reason to talk to the men to tell them.

Trial Examiner Danaceau: You mean you didn't talk, you didn't tell them?

The Witness: I think at a later date there was a meeting calling their attention to the fact that their contract was cancelled.

Trial Examiner Danaceau: Did you call their attention to it?

The Witness: I think it was that one meeting and I mentioned the fact to them.

Q. (By Mr. Witt). About when was this meeting, Mr. Sands?

A. Oh, we had some kind of a meeting—the exact date I don't know, but I told them I think the reason for the meeting was—I was calling attention to the fact that there was going to be a complaint filed
725 against our company and I wanted the men to keep up courage because they might get scared and lose their job.

Q. And for this reason you called the meeting?

Testimony of Garry Sands

A. I called the meeting for that reason.

Q. You didn't tell them anything else at this meeting?

A. I told them at that meeting that the contract—that it was cancelled and that was all.

Q. That was the meeting just to tell them about the contract?

A. I said what I said.

Q. You posted nothing?

A. No.

Q. Any men make any comments?

A. If they did, they didn't tell me.

Q. You are working under this agreement at the present time?

A. Well, the contract is cancelled.

Q. You are still working under the same provisions even though the contract is cancelled, the wage conditions remain the same?

A. I think we tried to live up to the spirit of the contract.

Q. And to the letter too?

A. I said to the spirit.

Q. But not to the letter?

A. Right to the letter, yes.

Q. Has that contract been re-executed since you cancelled it?

726 A. No, sir.

Q. Have you any present plans as to its re-execution?

A. I have no plans whatsoever at all.

Q. Neither one way nor the other?

A. Neither one way or another.

Q. How were negotiations for the making of this contract gone into? Did you get in touch with the A. F. of L. or did they come around to see you?

A. Well, for the negotiations of this contract, I went down with H. J. Sands.

Q. About when was that?

A. August 26th or 27th.

Q. You are sure it was not at an earlier day?

A. No, sir.

Q. You are sure it was not at a later time?

A. No, sir.

Q. Then you had one meeting in Milz's office on that day?

A. On that day, yes.

Testimony of Garry Sands

Q. Did you come to a final agreement on that day?

A. We talked over the contract and we submitted our views and they drafted a contract for a later date to be signed.

Q. The A. F. of L. drafted the contract?

A. I had a friend of mine who had a contract similar to the one I thought I would like to have incorporated, and I drew certain items and submitted it and changed it around and the final contract drafted
727 from it.

Q. How many more meetings did you have then on the 26th and 27th of August?

A. I think maybe one intermediate and then the final one.

Q. On what day was the contract signed?

A. I think the contract was signed, if I am not mistaken, on Friday or Saturday before Labor Day.

Q. Now, when you saw the different people after that, Farrell, Pansky, Linski, and Dolish, and I think the evidence will show that you saw all of them after the 26th and 27th, you didn't tell any of them about this A. F. of L. agreement?

A. I showed it to one man, yes.

Q. Who was that one man?

A. I showed it to Frank Pansky.

Q. Did you show it to any of the others?

A. I might have shown it to some.

Q. Do you remember who they were?

A. No; I am not sure; not sure of that.

Q. Now, you testified that with some of those men you discussed the new proposition that you were making with the guarantee of steady work at lower wages. Now, was that provided for in the agreement you made with the A. F. of L.?

A. What time? What meeting do you refer to?

Q. Well, you saw some of these people on August 30th and you saw some on September 3rd and 4th; is that correct?

728 A. That's right.

Q. When you made them this proposition of yours, any of those men, did you tell them that the agreement you had made with the A. F. of L. was drawn up along these lines to guarantee the men fifty-two weeks' work in the year?

A. I think at the first meeting, I don't think we had signed the A. F. of L. contract, so there would not have been any reason to mention it to them at all.

Testimony of Garry Sands

Q. Well, at later meetings, when you saw them after it was signed, and you discussed it with them?

A. I discussed it and mentioned it to Frank Panak, yes.

Q. That was after Labor Day; wasn't it?

A. Yes, sir.

Q. I will show you Board's Exhibit No. 4 again, the Company's agreement with the A. F. of L. and I will ask you to read aloud Article Five of that Agreement?

A. "It is mutually agreed by and between the parties hereto that during the slack periods of business or when it becomes necessary to reduce expenses, that the regular working day shall be reduced to six hours and the factory shall operate three days a week before laying off any employees. Should layoffs become necessary in any department, the employer agrees that the same shall be made according to seniority in said department wherever practical."

Trial Examiner Danaceau: You want the remainder of that article read?

729 Mr. Witt: No; it is not important.

Q. (By Mr. Witt). Did you say a minute ago that this agreement was signed on a Friday or Saturday before Labor Day?

A. That's right.

Q. That would be on the calendar the 30th or 31st of August; wouldn't it?

A. That's right.

Q. I show you Exhibit 4 again and ask you to read the first sentence of Article Two?

A. "It is mutually agreed by and between the parties hereto that at the present time a large number of the—" how far do you want me to go?

Q. The end of the first sentence.

A. "It is mutually agreed by and between the parties hereto that at the present time a large number of the production employees of the party of the first part are members of District No. 54 of the International Association of Machinists affiliated with the American Federation of Labor, but there are a small percentage of the said employees who do not belong to that or any other union."

Q. Now, was it true that on August 30th or 31st of this year that a large number of the production employees of the Sands Manufacturing Company were members of the American Federation of Labor?

Testimony of Garry Sands

A. Yes, it is true.

730 Q. And it is true that on that date a small percentage of the employees of the company did not belong to that or any union?

A. That's true.

Q. Now, you have already discussed the wage proposition you made with Frank Pansky?

A. That's right.

Q. And I think you said this morning that the wage proposition you made to Frank Pansky after you saw him, after Labor Day, was the one embodied in this agreement of the A. F. of L.?

A. That's right.

Q. I believe you also testified this morning that you showed Pansky the wage provisions of this agreement?

A. That's right.

Q. The wage provisions of this agreement are embodied in Article Eight, are they not? Those are all the wage provisions in this agreement; aren't they?

A. Those wage provisions for this agreement, yes.

Q. Now, Article Eight has three sections; has it not, A, B, and C?

A. That's right.

Q. Now, A referred only to members of the A. F. of L.; did it not?

A. Yes.

Q. And B referred to any new employees employed during the life of this agreement; did it not?

731 A. Yes, sir.

Q. Now, neither of those applied to Frank Pansky, did they?

A. No.

Q. A refers to all members of the A. F. of L. signed; he was not an A. F. of L. member, was he?

A. No.

Q. And B refers to new employees?

A. There is another that refers to key men.

Mr. Witt: Will you strike that answer out?

Mr. Smoyer: I don't see why he should.

Trial Examiner Danaceau: I will let it go in merely for the purpose of saving time. I want to caution the witness to please answer the question that the Government's counsel asks. If you have any further explanation to make, you can follow it up by explaining it, but first answer the question.

Q. (By Mr. Witt). Now C of this Article refers to all employees under this agreement; does it not?

Testimony of Garry Sands

A. Yes, sir.

Q. Would that apply to Frank Pansky?

A. Yes, sir.

Q. And consequently then the offer that you made to Frank Pansky when you saw him after Labor Day was the wage offer that you made to Frank Pansky after you saw him after Labor Day is the same as embodied in Article C of this wage agreement?

A. No, sir.

732 Q. You made another offer?

A. No, sir. I referred to another article in the contract.

Q. The offer you made to him was not contained in this paragraph?

A. Partially so. The last paragraph there.

Q. Will you show us the other section?

A. "It is mutually agreed by and between the parties hereto that keymen or foremen of any department shall have preference at the discretion of the employer over seniority rights should it be necessary for a factory layoff."

Q. That has anything to do with wage?

A. Yes, sir; it has.

Trial Examiner Danaceau: Which article are you reading?

The Witness: I am reading Article Five.

Q. (By Mr. Witt). Where is that?

A. Right here (indicating).

Q. Then as I understand your testimony now, it is that you offered Frank Pansky a five percent increase as contained in Article Eight C of this agreement and you also pointed out to him that he would have preference under this section you just read?

A. Yes; and besides that when you will refer to that particular article of minimum wage, I was making Pansky foreman of the department and I had a minimum wage of the foreman of that department, which was the price I offered Frank Pansky.

733 Q. Was that in this agreement?

A. For foremen.

Q. The minimum wage was for this agreement?

A. It says as previous employees.

Trial Examiner Danaceau: For a foreman, how about minimum wage for him?

The Witness: The same class of work.

Testimony of Garry Sands

Q. (By Mr. Witt). Will you point that out and read it?

A. "Shall receive the same hourly rate as last employed by the Sands Manufacturing Company."

Q. That is in Section A?

A. That is in Section A.

Q. Doesn't Section A refer only to members who were members of the District No. 54 who signed this agreement?

A. Yes, but you just asked me how I come to mention that to him.

Q. Well, even though this Section A only referred to members of the A. F. of L. you told him he could get the benefit of Section A?

A. Yes, sir.

Q. You offered him that under Section A?

A. Yes, because on the bottom paragraph it says anybody could come to work at our plant because that is not a closed shop agreement.

Q. Do you recall an employee of the company
734 by the name of John Palko?

A. I have heard of him.

Q. Tony Avon?

A. I know him.

Q. Harold Garms?

A. I don't know Harold Garms.

Q. Do you know if any of them were ever screw machine operators in the plant of the Sands Manufacturing Company?

A. I don't.

Q. Do you recall a meeting of the employees you had in the plant during the month of March this year before the strike at which several different things were discussed?

A. Why, I remember a meeting. I don't know which meeting you referred to.

Q. Perhaps I can help you. Didn't you discuss the difficult jobs in the plant and the easy jobs in the plant at that time and the problems in the machine shop and things of that nature at this meeting in March?

A. Yes, I did.

Q. Now, didn't some of the men say that some of the jobs in the machine shop were quite difficult jobs?

A. No, sir.

Q. Well, during this discussion, didn't you tell the men that you could get any new man and break him

Testimony of Garry Sands

in on any job in the plant within fifteen minutes!

725 A. No, sir; I didn't make any statement like that.

Q. Do you remember any statement similar to that?

A. I called a meeting, yes.

Q. Do you remember any statement similar to the one I just asked you about?

A. I remember a conversation something along those lines; not that way.

Q. What did you say along those lines?

A. The meeting that was discussed was a question of an increase in pay and I tried to stall off the question of increase of pay to the men.

Q. And did you try to stall it off by telling them how easy the different jobs were?

A. No; I didn't at all. Not in that way at all. I tried to tell them where they were getting a sufficient amount of pay for the class of work they were doing, and also I tried to tell them the difference between skilled men and partly skilled and common labor. That was the discussion at that meeting.

Q. That is the meeting I am talking about, Mr. Sands.

A. That's right.

Q. During the talk that you gave them, you pointed out to them that there was practically no skilled jobs in the plant?

A. No; I didn't point that out to them.

Q. Didn't you say it was possible for you to break in any new man on any job in fifteen minutes?

736 A. Now that you call my attention to it, I remember last March I called attention to the men that we completed the Government job in sixty days and broke in a lot of new men, but I never said it would take fifteen minutes to break any man in.

Q. Some of those men you broke in for the Government job were put in the machine shop?

A. Quite a few of them.

Q. Now you have told us about meetings that you had with the committee during the month of August, during the layoff. Did you ever mention the A. F. of L. in those meetings to the men.

A. No; I didn't mention the A. F. of L. to any men.

Q. Did you ever tell them you were considering making the agreement with the A. F. of L.?

A. No; I didn't tell them that.

Testimony of Garry Sands

Q. Before that meeting with Milz on August 26th I think it was?

A. Yes, sir.

Q. Did you tell any of your employees that you were considering making an agreement with the A. F. of L?

A. No, sir; I didn't.

Q. You didn't tell any of them?

A. No, sir.

Q. You said you had a meeting with the committee on August 19th; that was Monday, a meeting August 21st; that was Wednesday the plant shut down?

737 A. Yes, sir.

Q. You said that the committee came back on Wednesday, August 21st and said the men would take a shutdown?

A. I said their ultimatum was they didn't have any suggestion to offer.

Q. Well, had you made any suggestions on Monday, August 19th?

A. I was at the end of the rope. I couldn't make any suggestions then.

Q. On Monday, August 19th, did you say anything to them about shutting the plant down for a week or two?

A. No; I didn't.

Q. Didn't they come back to you on Wednesday, August 21st and say to you then that "We will take this layoff?"

A. No; they didn't say that.

Q. You are quite sure about that?

A. Positive.

Q. Just let me ask my question. You are quite sure, Mr. Sands, when this meeting broke up on Monday, August 19th, that the men—were not—the committee members were not going back to the men to find out whether the men would take a layoff of a week or two?

A. No, sir.

Q. That committee broke up without any suggestions on either side?

738 A. They were to go back and find out what they could do.

Q. Did you call this meeting on August 19th?

A. Yes, sir; I did.

Q. Do you remember how you opened that meeting with the committee?

Testimony of Garry Sands

- A. Just the same subject I mentioned before.
 Q. What was that?
 A. About that we wanted to run the machine shop.
 Q. That is what you spoke about?
 A. That is what started the meeting.
 Q. Didn't you talk about wage rates at this meeting?
 A. No, sir.
 Q. Wage rates were not discussed at all at this conference?
 A. Wage rates were not discussed; no, sir.
 Mr. Witt: That is all.

RE-DIRECT EXAMINATION

Q. (By Mr. Smoyer). You have been shown a letter of reference for Tony Moraco?

A. Yes, sir.

Q. Will you relate the circumstances under which that letter was written?

A. Mr. Tony Moraco came into the office and said, "Hello," and I said, "Hello, Tony; how are you?" He said, "I am looking for employment somewhere else and I would like a letter of recommendation."

Well, I had no animosity against Tony Moraco, 739 he was formerly a good man when he first started to work in the company, and then he got unruly. I wasn't unfriendly to Tony. I didn't want him not to get a job, so I wrote a letter of recommendation that he was a faithful employee. I had no ill feeling against him at all.

Trial Examiner Danaceau: He asked you for a letter of recommendation?

The Witness: He asked me for a letter of recommendation; yes, sir.

Q. (By Mr. Smoyer). Mr. Witt was showing you this A. F. of L. agreement respecting wages?

A. Yes, sir.

Q. At the time that you had Frank Pansky in there in your office, in that conversation he signed an A. F. of L. application?

A. Yes, sir.

Q. Mr. Witt has called your attention to the number of layoffs in the machine shop that occurred late in July?

A. Yes, sir.

Q. Now you give the reason again why those layoffs took place at that time in that department?

Testimony of Garry Sands

A. Well, the reason for the layoffs in the machine shop after July?

Q. In July?

A. Well, we had these committee meetings and the rest of the shop, there was no work and I wanted
740 to run that shop on three days a week, but I couldn't run the rest of the shop on three days a week under the paragraph or article in the contract which says that before I can work three days a week I would have to lay off all new men, and there were a great deal of men in the machine shop so I had no alternative and I had to lay them off because there was no work. I had to run the plant at a minimum; I had to run three days a week, even though the machine shop was behind.

Examination by TRIAL EXAMINER DANACEAU

Q. (By Trial Examiner Danaceau). How long did you run that way?

A. I ran it until August 31st.

Q. There were some matters I wanted to ask you. You had a meeting with the committee on August 19th?

A. Yes, sir.

Q. I gathered that the matter under discussion was a difference of opinion between the committee and the management with reference to transferring men from one department to another, which the committee wanted, and the management's position that they rather have new men; that is, men who worked there but not of the original group in the machine shop or department, for instance?

A. Well, I told the men at that meeting, "You are practically making a closed shop under the proposition of excluding A. F. of L. men. You may lay off men up-
741 wards of thirty-one which are all A. F. of L. men."

Mr. Smoyer: Will you read the answer please?

(Last answer read by the Reporter.)

Q. (By Trial Examiner Danaceau). In other words, you wanted these men who were after thirty-one but who had experience in the machine shop to—

A. To continue working.

Q. You wanted these men from other departments which were original men continued to be laid off?

A. Yes.

Q. And the committee, what was their response to that in this August 19th meeting?

Testimony of Garry Sands

A. It was shut down; all those men from thirty-on were laid off; gave me a chance to get—

Q. In other words, the committee said no?

A. That's right.

Q. You asked them to come back on August 21st?

A. Yes.

Q. You had that 19th day of August meeting and asked them to come back on August 21st?

A. Yes.

Q. Did they say they would talk it over with the men?

A. I told them to go back to the men and talk it over.

Q. Did you say anything about any alternative that you would either have them close down the shop a week or two?

742 A. No. I said we couldn't continue any longer. You are breaking the contract.

Q. You told them to see the men?

A. I told them to see the men if we should run the machine shop with old men or new men, with a full crew.

Q. That is what they were to report to you?

A. Yes, sir.

Q. When they came back, what did they say?

A. They said the men decided you probably better shut down the whole plant. You wait until you get busy so as to take back all the old men.

Q. Was anything said about a decision to operate three days a week?

A. I said the other departments were not busy at all, working three days a week.

Q. Their decision was that if it wasn't busy, to close down the plant until you became busy?

A. Then I would have to argue about taking more men back. They were to be the judge.

Q. I don't want to argue with you. That was their decision?

A. That was their position.

Q. One thing more I want to inquire about and that is about wages. Does this summary show the wages of various employees as to what they received?

Mr. Smoyer: Yes, sir. It is on there, the hourly rates.

743 Mr. Witt: You want it (indicating)?

Trial Examiner Danaceau: I just want to see whether it has sufficient information.

Testimony of Garry Sands

Q. (By Trial Examiner Danaceau). Mr. Sands, do the wages vary in the different departments, leaving out the foreman for a consideration?

A. Well, the wage scale of all the thirty-one old men are not based upon the prevailing wage scale of other factories. These men were ten, twelve, and some fifteen years, and some have a lot of money and were loyal to us and they continued when the men got raises in the last five years, they built up to a large amount of money regardless of the wage.

Q. These wages varied according to the services and the type of services?

A. Yes, sir.

Mr. Smoyer: I think it ought to be clear in the record as to what the normal work week was, what the hours were.

Trial Examiner Danaceau: I think we should have it.

Mr. Smoyer: It used to be forty-four.

Trial Examiner Danaceau: Then after the NRA it was forty?

Mr. Smoyer: Forty, yes; that's right. I think we should amend our answer.

Trial Examiner Danaceau: In what respect?

Mr. Smoyer: Well, those dates.

Trial Examiner Danaceau: Put it this way. The pleadings in the case will be amended so that the dates as furnished by the evidence will be substituted for the dates in the pleadings.

Mr. Smoyer: In the respects we have mentioned heretofore in the record.

Trial Examiner Danaceau: Well, I assume there are some other respects.

Mr. Witt: In all respects.

Mr. Smoyer: All right.

Mr. Stanley: We thought that someone, picking up this answer without reading this bulky record would not know about that, and if he amends by interlineation—

Trial Examiner Danaceau: You may amend the answer by interlineation and put in the correct date and return it to the Reporter.

Mr. Witt: It seems to me that we want to amend the complaint, not only with respect to dates but to the number of employees employed at different times. That will be shown by the production payroll.

Trial Examiner Danaceau: You can't do that by interlineation?

Testimony of Garry Sands

Mr. Witt: No.

Trial Examiner Danaceau: Then the request that the complaint be amended and that the dates and the number of employees at different times shall comply with the testimony and the evidence.

745 Mr. Lodish: Regarding the names of the employees about whom the issue of back pay has arisen, I have here a list that should be recopied because of its condition, of forty-eight names. Will it be satisfactory to read them into the record?

Trial Examiner Danaceau: Just let the Reporter copy the names.

Mr. Lodish: Just let him copy them into the record instead of reading it and instead of taking time now, let him copy it in.

Mr. Smoyer: No other data except that subject to that these men are on the—

Trial Examiner Danaceau: Without objection upon the part of the respondent, the Government may read into the record the names of the forty-eight men who are employees of the Sands Manufacturing Company at or prior to August 21st, 1935 and who have not been employed by the Sands Manufacturing Company since August 21st, 1935, for whom the Government has made this complaint and is asking relief. You will therefore read those names to the Reporter just as soon as he gets through with some of this other business we have.

Mr. Witt: Well, there is one minor correction and one major one that you have there. You have referred to them as employees that worked for the company before August 21st, and you should have said after June 17th. We are not interested in those who left the employ of the company before the time of those layoffs.

746 Mr. Stanley: I think if he is going to put a final date on that, it should be before July 5th when this Act came into effect.

(Conversation had off the record.)

Trial Examiner Danaceau: Will it be satisfactory to us that with the exception of Mr. Norman, all the other men were employed during all or part of the time from July 10th to August 21st, 1935. Well, let us stipulate that.

Mr. Smoyer: Mike Hudak would be in that class too.

Mr. Witt: No; he worked in July, Mr. Smoyer.

Testimony of Charles E. Rudd

Mr. Smoyer: Yes.

Mr. Witt: That wouldn't include him.

Trial Examiner Danaceau: Subject to any correction which may be made by stipulation between the parties, that such names with the exception of Mr. Norman are all men who worked during all or part of the time in the period beginning July 5th, 1935 and ending August 21st, 1935.

(List of Employees: Tony Avon, Clarence Ball, Joseph Blaha, William Brandt, Frank Dolish, C. J. Dusek, Albert Farrell, H. H. Garms, John Greeley, Mike Hudak, Lada Jindra, Leo Kahn, Stanley Linski, H. J. Meyer, Tony Moraco, Martin Moritz, Louis Nagy, Elmer Ochs, Frank Pansky, John Pansky, John Popp, C. E. Rudd, Ed. Stack, Joe Swancer, Emil Tulow, W. Bakum, Charles Becks, Joseph Bondra, Stanley Dymidowski, Max Feinstein, Carl Frank, Robert Her-
747 man, Robert Hronek, Myron Kanner, Emmett Kanna, Joseph Kozlowski, Willard Kraus, Louis Meyers, John Patchford, Henry Schilthorn, George Sevcik, William Sumanek, John Sweitzer, Harold Wenger, Matthew Wiersch, Clarence Wisniewski, Joseph Wycickowski, Jack Norman.)

Mr. Smoyer: If we have not said it, we do rest.

Trial Examiner Danaceau: Respondent rests at this time. Have you anything in the way of rebuttal?

Mr. Witt: We will call Mr. Rudd with his membership book.

REBUTTAL

CHARLES RUDD,

recalled as a witness for the National Labor Relations Board, further testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Witt). Mr. Rudd, you have already been sworn, have you not?

A. Yes, sir.

Q. You testified you were the Financial Secretary of Local 22 of the M.E.S.A.?

A. Yes, sir.

Q. As such, you have the membership books?

A. Yes, sir.

Q. Of those employees who have worked for the Sands Manufacturing Company?

Testimony of Charles E. Rudd

A. Yes, sir.

Q. Now, in order to make clear about what we are about to do, I want to explain that from this
748 production payroll and I am going to read off to you the names of those employees who were in the machine shop just before the layoff and ask you which of those were members of the M.E.S.A. I have all these names abstracted from the payroll.

Trial Examiner Danaceau: If that is the shortest way to do it, all right.

Mr. Witt: That is the shortest way to do it.

Q. (By Mr. Witt). Was J. Greeley a member of the M.E.S.A. before the layoff?

A. Yes, sir.

Q. Was C. Dusek before he was laid off?

A. Yes, sir.

Q. Was H. Meyer?

A. H. Meyer; yes, sir.

Q. Was E. Stack a member of the M.E.S.A. before he was laid off?

A. Yes, sir.

Q. Was Mr. Wiersch a member of the M.E.S.A. before he was laid off?

A. Matthew Wiersch?

Q. I guess the M. is for Matthew Wiersch?

A. Yes, sir.

Q. Was J. Sweitzer a member of the M.E.S.A. before he was laid off?

A. Yes, sir.

749 Q. Was Mr. Kanner a member of the M.E.S.A. before he was laid off?

A. K-a-m-m-e-r?

Q. Yes, sir.

A. You have K-a-n-n-e-r.

Q. Myron Kammer. Was H. Wenger?

A. Yes, sir.

Q. Was A. Graulle?

A. Yes, sir; signed an application one—

Q. Paid his membership fee?

A. No.

Q. And you have already explained in your previous testimony what the difference if any there is between those who have signed applications and those who have paid dues; haven't you?

A. Yes, sir.

Q. Now, Mr. Rudd, you already testified that before you were laid off you were a foreman of the tank

Testimony of Charles E. Rudd

heater department of the Sands Manufacturing Company?

A. Yes, sir.

Q. You were a foreman during the month of April, May, June and July of this year?

A. Yes, sir.

Q. Do you recall how many men worked in your department in the month of April, May, June and July of this year?

A. When the line was in production, eight besides myself.

Q. Were all eight so-called old men; that is, all part of the thirty-one or thirty or thirty-three or
750 whatever it is that we call the old men?

A. Yes, sir.

Q. During those months, did you know what the production in that department was?

A. I know what we run each day.

Q. Will you tell us what the average was or will you give us the limit on the production during those months?

A. The average for eight hours was eight hundred and fifty to nine hundred heaters, nine hundred and twenty-five.

Q. How many men did you have working in your department in the month of July?

A. Nine besides myself.

Q. How many of those were old men?

A. Two.

Q. Who were they?

A. Jack Palko and myself.

Q. Who were the rest?

A. Government order men and the new men.

Q. Do you remember what your production was in that period in that department?

A. Yes, sir.

Q. Will you tell us what it was?

A. Seven hundred and ninety was the most made at any one day.

Q. And how many days did you make seven hundred and ninety; do you recall that?

751 A. Only one day.

Q. Was your production less than other times in the month of July?

A. Yes, sir.

Mr. Witt: Your witness.

CROSS EXAMINATION

Q. (By Mr. Smoyer). In the tank heater department, when you made this eight hundred and fifty and nine hundred, it was old men?

A. Yes, sir.

Q. And when you made the lesser amount, it was men who just worked a short time?

A. Well, they were transferred from the coil room mostly.

Q. Transferred from the other departments to you?

A. Yes, sir.

Q. And their production was twelve or fifteen per cent less?

A. More.

Q. I thought you said less?

A. I said more.

Q. You said from eight hundred to nine hundred were old men?

A. Yes, sir.

Q. And with the new men were seven hundred and ninety?

A. Yes.

Trial Examiner Danaceau: Who was transferred to the department, old men or new men?

752 The Witness: Both of them.

Q. (By Mr. Smoyer). In July you said when you had men that were Government order men or men transferred from other departments?

A. New

Q. And these new men you weren't able to do as well as you could with the old men?

A. Yes, sir.

Q. That was according to their experience?

A. Yes, sir.

Q. And that would apply to any department in the shop?

A. Yes, sir.

Q. Have you named the number of men here and I want to identify them as to whether, what classification you know them, as old men or new men?

A. All right.

Q. The old men being the original thirty-one, Greely?

A. An old man.

Q. Meyer?

A. New man. H. J. Meyers?

Q. H. J. Meyers.

Testimony of Charles E. Rudd

A. An old man.

Q. Stack?

A. An old man.

Q. Wiersch?

A. A new man.

Q. Sweitzer?

A. A new man.

Q. Kenna?

A. A new man.

Q. Wenger?

A. A new man.

Q. That's all.

Mr. Witt: H. Graulle.

Q. H. Graulle?

A. A new man.

RE-DIRECT EXAMINATION

Q. (By Mr. Witt). You said you had eight old men in the tank heater department during the month of April and May?

A. Yes, sir.

Q. Had any of those been transferred to the tank heater department from other departments?

A. Yes, sir; all of them.

Q. All of them had been transferred down to the tank heater department?

A. Yes, sir.

Examination by TRIAL EXAMINER DANACEAU

Q. (By Trial Examiner Danaceau). Do you remember offhand who those eight were?

A. Yes, sir.

754 Q. Will you state them?

A. Harold Garms, Jack Palko, John Popp.

Clarence Ball.

Mr. Smoyer: Clarence who?

The Witness: Clarence Ball.

A. Lou Nagy, Mike Hudak, Leo Kahn, Joe Blaha.

Trial Examiner Danaceau: Anything further, Mr. Smoyer?

Mr. Smoyer: I guess not.

Trial Examiner Danaceau: Anything further of this witness?

Mr. Witt: No, sir.

Trial Examiner Danaceau: Step down, and call your next witness.

*Testimony of Tony J. Moraco***TONY MORACO,**

being recalled as a witness for the National Labor Relations Board, further testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Lodish). Now, you are Mr. Moraco and you were sworn before and have testified before?

A. Yes, sir.

Q. Did you hear Carbeck, Junior complain about your work from the witness stand?

A. Yes, sir.

Q. Now you heard him say something about valves, not keeping the bench clean; didn't you?

A. Yes, sir.

Q. Will you tell us about that?

A. Well, I will give you an explanation.
755 shall I?

Q. Yes.

A. I used to work down the shipping department and I used to be ordered by the foreman to take the valves up.

Q. Who was that?

A. Slim.

Q. He instructed you to do what?

A. He instructed me to take them up to the machine shop and I had instructions before that I always had to put the valves on the benches and so I put the valves on the benches.

Q. Is that what Carbeck complained about?

A. Never heard any complaints about it. They were thermostatic valves, defective, and they were all returned valves.

Q. Defective you said?

A. Yes, sir.

Q. You heard him say something about working on a chain?

A. Yes, sir.

Q. And he said about the fact that you sat down while working on the chain?

A. Yes, sir.

Q. Is there anything unusual about working and sitting down while working on a chain?

A. Yes, sir; that's not unusual, not that I know of.

Q. You saw others do that?

A. Yes, sir.

Testimony of John O. Sweitzer

Q. You heard Herbie Sands and Garry Sands
756 say you were in a conference on August 19th?

A. Yes, sir.

Q. In which you stated or you told them that no Federation of Labor men could come to work until all M.E.S.A. men were working?

A. I heard they stated that.

Q. Tell us where you were on August 19th?

A. Somewhere in the West Virginia mountains.

Q. When did you leave for West Virginia?

A. August—possibly July, sometime just before August 2nd, about August 2nd.

Trial Examiner Danaceau: In other words, you weren't at that conference?

The Witness: No, sir.

Q. (By Mr. Lodish). You are sure you weren't there?

A. Yes, sir.

CROSS EXAMINATION

Q. (By Mr. Stanley). But you were at meetings before that time; weren't you, right along?

A. Yes, sir.

Q. You were a regular attendant at committee meetings?

A. Yes, sir.

Q. There were discussions about M.E.S.A. and A. F. of L. at these committee meetings?

A. Not that I know of.

757 Mr. Stanley: That is all.

JOHN O. SWEITZER,

being recalled as a witness for the National Labor Relations Board, further testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Lodish). Your name is Sweitzer?

A. Yes, sir.

Q. Are you the man that was referred to as the one who did such fast work in comparison with Tony Avon?

A. I am the speed demon.

Q. You are the speed demon. Have you ever done any of that chain work we just asked Mr. Moraco about?

A. Yes, sir.

Testimony of John O. Sweitzer

Q. How did you do that?

A. Standing or sitting. That was up to you. If you wanted to stand or sit down, that is up to you.

Q. Did you ever do it sitting down?

A. Yes, sir.

Q. Was it unusual to sit down?

A. Everybody else sat down.

Q. Where were you employed, Mr. Sweitzer?

A. Machine shop.

Q. Were you always in the machine shop?

A. From February 22nd this year.

Q. You would be considered a regular machine shop employee?

758 A. I guess you would call it that.

Q. You remember July 30th?

A. That was the day I got laid off.

Q. Immediately preceding July 30th, did you know that the plant was not busy in other departments as Garry Sands testified?

A. I knew there was a layoff in the tank heater department.

Q. Were you busy in the machine shop?

A. Making stock; that is all.

Q. Tell us what the condition was of the stock on July 30th?

A. More stock than I ever saw since I have been there.

Q. Roughly, was there enough stock to last a week or a month or several months? Give us your best estimate.

Mr. Stanley: How would he know, being there from February, how would he know the number of orders and the demand for it?

Trial Examiner Danaceau: I think he can answer that question the best he can. He has been there since February.

Examination by TRIAL EXAMINER DANACEAU

Q. (By Trial Examiner Danaceau). You worked there prior to February?

A. Worked in the plant prior to February.

Q. You worked in the machine shop?

A. Worked in the machine shop since February.

Q. And how long have you been in the plant?

A. Started the Government order in 1934.

Testimony of John O. Sweitzer

stock was there on hand at the end of July?

759 Are you able to answer that question?

A. Like I said before, more stock than I never saw in the machine shop, as far as that is concerned.

DIRECT EXAMINATION (Continued)

Q. (By Mr. Lodish). Are you able to give us an estimate how long that would last? ;

A. I would say several months according to the valves.

Mr. Stanley: I object.

Trial Examiner Danaceau: When you say several months, you mean as the plant was usually operated would that take that time?

The Witness: That is true. I can explain it this way. My job is about testing valves and they were using valves as I tested them. In fact, they had enough valves on hand; and in fact, the last three weeks all I did was test valves.

Q. (By Mr. Stanley). You say that while you were working in the machine shop, as long as you were testing valves they would be used for production; is that right?

A. As a rule, yes.

Q. That was true, as a rule, during the time you were working in the machine shop?

A. Yes, sir.

Q. There was no stock built up at all?

A. Very little.

760 Q. Well, how many besides the part that you tested, how many different parts were there that were operated upon in that machine shop?

A. Valves is the most of the work in the machine shop, finishing valves.

Q. Are castings worked on in the machine shop?

A. Well, a valve is a casting to begin with.

Q. Well, that is all I do know about it. There were castings?

A. Most of the castings used in the machine shop going into valves.

Trial Examiner Danaceau: I don't see any point to any further examination on this point.

Mr. Stanley: All right.

*Testimony of Albert Farrell***ALBERT FARRELL,**

recalled as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Lodish). Your name is Farrell?

A. Yes, sir.

Q. What job did you have at the Sands Company?

A. I had a foreman job.

Q. What department?

A. In the coil room.

Q. Will you tell us how long the custom had been at the factory to switch the coil room men into other departments?

761 A. All I remember those movements for five or six years, possibly longer.

Q. Did you hear any complaint about the coil room men not doing the work while in other departments?

A. No, sir.

Q. Did you ever hear any complaints about Paul Brandt, to be more specific?

A. No, sir.

Q. Did you hear the complaint about him on the witness stand here?

A. Yes, sir.

Q. Tell us your opinion about Paul Brandt as a worker?

A. Paul Brandt is a very good worker. He is a cripple, but on most jobs I think he can handle and take care of himself.

Q. When Paul Brandt used to go from the coil room to the machine shop, what was his occasion for going there? Who called him?

A. Carbeck used to send for him at times.

Q. Who else?

A. Well, that was about all. He sent somebody down for him.

Q. Carbeck used to call him?

A. Yes.

Q. Was there any particular time when he would call him more often than any other time?

A. Well, I know he used to do a lot of work, cast iron coils, putting nipples on coils at the time there was a rush on relief valves he would put him on.

762 Q. Did he always mention Paul Brandt?

A. Yes, he always asked for Paul Brandt.

Testimony of Frank Pansky

Q. How would you like it when Paul Brandt left your department?

A. I always liked to keep him there.

Q. Otherwise Carbeck would have him?

A. Yes, sir.

Q. Carbeck mostly called for him?

A. Yes, sir.

Q. You recall the occasion of the Government job workers?

A. Yes, sir.

Q. Did you have anything personally to do with the notifying them of the layoff?

A. At the time of the layoff, Herbie Sands came out with a lot of pay envelopes and handed them to me to pass out to the men and I think I took care of most of them.

Q. What did you tell them when you gave them their pay?

A. I told them when and if there was anything doing again they would be notified.

Trial Examiner Danaceau: Anything further?

Mr. Lodish: That is all.

Trial Examiner Danaceau: Any cross examination?

Mr. Smoyer: I don't think so.

FRANK PANSKY,

recalled as a witness for the National Labor Relations Board, further testified as follows:

763 **DIRECT EXAMINATION**

Q. (By Mr. Lodish). You are Mr. Pansky?

A. Yes.

Q. Were you present when—this is assuming that the evidence is already in—when Mr. Potter called Mr. Garry Sands on the telephone?

A. Yes, sir.

Q. Who else was present?

A. Lada Jindra.

Trial Examiner Danaceau: Which telephone conversation were you present at? Which end did you hear?

The Witness: Mr. Potter.

Q. (By Mr. Lodish). That was September 3rd?

A. Somewhere around there.

Testimony of Frank Pansky

Q. Did you hear Mr. Potter's conversation, his end of the conversation?

A. Yes.

Q. Did you hear him say anything about meetings?

A. Yes.

Q. Tell us to the best of your recollection just about what it was that he said about meetings?

A. You mean when he was talking to Mr. Sands?

Q. Yes, on the telephone.

A. Well, the end of it I heard was, "Will you see the committee or me?" And he threw up his hands and that is all.

764 Q. Did you attend the meeting of May 31st at which the Conciliator was present?

A. Yes, sir.

Q. Do you remember a discussion regarding five men?

A. Yes, sir.

Q. Without asking you all of the steps and elements in the discussion, I will ask you whether you remember the conclusion, the final speeches regarding this discussion of five men?

Trial Examiner Danaceau: You mean the final statements?

Q. (By Mr. Lodish). Yes, the final statements by anybody.

A. Well, the only statement I heard was Garry Sands say, "Layoff"—or rather, "Fire these five men." And Harry Potter said that under the conditions they should have a hearing before the committee.

Q. You testified earlier that on or about September 4th, Mr. Garry Sands said to you words to this effect, that you drop the M.E.S.A. and join the A. F. of L. Mr. Garry Sands denied that he said that and I will ask you again was that said by Mr. Garry Sands on this day?

Mr. Stanley: I object to that. We can't continue on this indefinitely.

Trial Examiner Danaceau: You wish to correct that testimony?

Q. (By Mr. Lodish). Do you wish to correct that testimony in any way?

A. No, sir.

765 Q. You were present at the meetings of August 19th and 21st when the so-called solution was discussed by Mr. Sands; he used the word "solution."

Testimony of Frank Pansky

A. Yes, sir.

Q. Was Tony Moraco there?

A. No.

Trial Examiner Danaceau: Speak up.

The Witness: No.

Q. (By Mr. Lodish). Did Mr. Garry Sands say—

Mr. Stanley: There wasn't any claim that he was at that meeting; no testimony to that effect.

Trial Examiner Danaceau: Well, the record will show.

Q. (By Mr. Lodish). Did Mr. Garry Sands say anything to you or anybody else in your presence about breaking the contract?

A. No.

Q. You are sure that that was not mentioned?

A. Positive.

Q. Well, what did Garry Sands mention first on August 19th and then on August 21st?

Mr. Stanley: I object. We have been over that with this very witness.

Examination by TRIAL EXAMINER DANACEAU

Q. (By Trial Examiner Danaceau). You were asked when you testified here the other day what that conversation was; were you not?

766 A. Part of it.

Q. Only part of it?

A. There were certain statements made that were left out.

Q. Will you give us the statements that you weren't asked about the last time on the stand?

A. The last time I was not asked that Garry Sands, concerning the fact that being slow that he would like to lay off some more additional old men or else have to shut the shop down.

DIRECT EXAMINATION (Continued)

Q. (By Mr. Lodish). What did you say to that?

A. I said, "We will take it back to the men and find out what the men wanted."

Q. After you came back from your conference with the men, what did you say to them?

A. I said that the men decided that the work was slow and they would take that week or two weeks layoff.

Mr. Lodish: That is all.

Trial Examiner Danaceau: You want to cross examine this witness?

Mr. Smoyer: Just a minute—that is all.

*Testimony of Lada Jindra***LADA JINDRA,**

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Lodish). Will you state your name and address?

767 A. Lada Jindra, 2917 East 50th.

Q. What was your work at the Sands Manufacturing Company?

A. Trimmer.

Q. Now, I will ask you whether you attended the meetings of August 19th and August 21st, at which Herbert and Garry Sands were present?

A. Yes, sir.

Q. You haven't testified at all yet, have you?

A. No.

Q. Will you state the conversation?

Mr. Smoyer: Was this man sworn?

Trial Examiner Danaceau: Yes.

Q. (By Mr. Lodish). Will you state the conversation that was had at the meeting of August 19th and who said what?

A. Well, Garry Sands wanted to lay off the five high paid men and we said he couldn't do that because our contract says seniority. We said, "Lay off the five youngest men." He said, "I couldn't do that because my average cost." That is the hourly average cost of the company was up and he wanted to bring it down and he said, "Either lay off the high price men or we will have to shut up for two weeks."

Q. That was on August 19th?

A. On August 19th. And we told him we would see our men to see a way out as Garry suggested. We could see no way out, so we told the management to shut down the plant as agreed.

768 Q. Did Garry Sands or either one of the Sands ask you how much work was accomplished in the department?

A. He asked me, yes. He said there wasn't much work being accomplished.

Q. He asked you?

A. I agreed with him.

Q. What did you say? What was your answer, specifically?

Testimony of Lada Jindra

A. I told him there wasn't many orders, so there couldn't be much work.

Q. That is all. I don't want to stop you.

A. That is all.

Q. That is the total talk that Mr. Garry Sands had with you. Did Mr. Garry Sands say anything or anybody else say anything on August 19th about your breaking the contract?

A. No, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Did he say he was living up to the contract?

A. No; not that I recall.

CROSS EXAMINATION

Q. (By Mr. Stanley). Mr. Jindra, you were formerly a foreman?

A. A foreman—no, sir.

Q. Were you ever a head of a department?

A. No, sir.

Q. You are a committeeman?

A. Yes, sir.

769 Q. Now, you have had a good many meetings, your committee, with Mr. Sands?

A. Yes.

Q. And you had a good many meetings during the summer of this last year?

A. You mean after June?

Q. Yes.

A. Yes.

Q. You discussed some of the provisions in this contract; didn't you, about going back June 15th?

A. Yes, sir.

Q. You discussed a great many times this Clause Five; didn't you?

A. Five?

Q. Yes.

A. Yes, sir.

Q. That is the seniority clause?

A. Yes, sir; by departments.

Q. Now you just repeated "by departments." That was the main contention?

A. Yes, sir.

Q. That was the bone of contention?

A. That was the main thing.

Testimony of Lada Jindra

Q. And those disputes came about generally when work was short in one department and there was talk of transferring men from that department, from the department that was slack over to another department; that is when you discussed this Clause Five?

A. That was discussed about July 10th.

Q. And under those conditions?

A. The tank heater department was going to be shut down and we discussed it that time.

Q. That's right. And it was the contention of your committee that if the men in the tank heater department, if that department is to be shut down, those men ought to be shifted over to another department, that would be continued running; is that right?

A. In a way, yes, and in another way, no.

Trial Examiner Danaceau: Explain yourself.

A. Our first contract had seniority and our shipping department had men working in there that were taken from different departments and put into the tank heater department, and when the question came up for these men to be laid off, they felt they were from some other department and they didn't feel they should be laid off. They raised a lot of noise about being laid off, and they claimed their seniority from before.

Q. They didn't want to go by that classification posted in the other departments?

A. Well, that was not posted until this argument.

Q. When was the argument?

A. Why, about—

771 Q. We understood from the testimony here that this was posted after June 17th conference; are you sure?

A. That is why it was posted.

Q. All right. That is the first argument. Some of these men claimed that a long while back they had obtained seniority in other departments.

A. They were hired in other departments.

Q. After the classification went up, you still had arguments?

A. No; it stayed that way, it was understood.

Q. There came a time in the machine shop when they wanted to put on a good number of men?

A. When was this?

Q. Well—

A. June 17th.

Testimony of Lada Jindra

Q. Didn't that come up in August?

A. No, sir.

Q. What department were there discussions about in August, if it wasn't the machine shop?

A. There were only two meetings in August concerning layoffs.

Q. What departments did they have to do with?

A. Well, wherever the men were to be laid off. I don't know what Garry talked—picked them from what departments.

Q. There wasn't any particular department you meant by that?

A. No.

Q. These men that Mr. Sands wanted to lay off were objecting to being laid off?

A. No, sir.

Q. Then what was the contention?

A. I don't understand you. I don't follow you.

Trial Examiner Danaceau: What was the discussion, if that wasn't the matter?

The Witness: Well, about because a charge that Garry wanted to lay some men off and the conditions were in the factory, we agreed that five men were to be laid off because seven—

Trial Examiner Danaceau: What department?

The Witness: The five youngest men from different departments, five youngest men, and he should lay them off. Then the first meeting was on the 19th of August; that was either we work or allow them to lay off the highest priced men or close the place down.

Q. (By Mr. Stanley). You finished.

A. I repeated that before.

Q. You testified to that on direct examination. Now how many times did you discuss this Section Five?

A. Well, I could only remember the time, July 10th; after that it was the next day that it was by departments.

Q. Did you go to all the meetings?

A. Well, after June 17th?

Q. Yes.

773 A. Yes.

Q. You said the contract as it had originally—the first one. The first one didn't have the words "and by departments?"

A. Not that I recall.

Q. "And by departments" was added by the demand of the management?

Testimony of Lada Jindra

A. By the management; that's right.

Q. Let us see if I get your interpretation of this as a committeeman. Suppose a man had been hired in the—well, the machine shop, for example, this spring—

Mr. Lodish: I would like to ask that hypothetical cases be restricted to actual situations. We had that trouble before, mixing in hypothetical questions and mixing them with actual situations and it is rather confusing.

Trial Examiner Danaceau: We will try for a little while and see how it works out.

Mr. Stanley: I have no actual situation.

Trial Examiner Danaceau: I think if counsel is trying to find out the committeeman's interpretation.

The Witness: That's all right.

Q. (By Mr. Stanley). Supposing a man has been hired this last spring in the machine shop and supposing a man had been hired five years ago in the tank heater department and suppose the tank heater department was about to shut down on account of
774 lack of work and then suppose that a man that had been hired last spring in the machine shop was temporarily off and there was a place—in other words, there was a place which could be filled by the man who had five years' seniority in the other departments, in the tank heater department, or by the man who had been hired only six months in the machine shop, now what was the interpretation of the committee on that?

A. You mean you could transfer from those departments?

Q. Yes.

A. You couldn't do that.

Q. The committee agreed to that?

A. Yes, sir.

Q. You still think that is a question of interpretation?

A. Since July 10th, that was our understanding.

Q. That is regardless of high pay or low pay?

A. That goes by seniority; no pay concerned with it.

Q. Why did you talk about high pay?

A. Garry Sands wanted to lay off the highest paid men but not by seniority. Some of our highest paid men had the most seniority.

Q. That is what I am getting at. The older men are the higher paid men?

Testimony of Lada Jindra

Q. That's right. And these five men were in various departments; weren't they?

A. Right.

775 Q. And at that time Garry Sands wanted to build up the machine shop?

A. No, sir; I told you no.

Q. You recall nothing about building up the machine shop in August?

A. No, sir; not in August.

Q. And you have been there for several years; haven't you?

A. About seven years.

Q. You know as an old employee that it is necessary to build up the stock in the machine shop; don't you?

A. Yes, sir.

Q. Before the other departments go ahead?

A. Depends on how it is before the orders come in; if it is not too low.

Q. In the inception of making up, using that stock from the machine shop, in the making it up by any other departments?

A. Oh, sure.

Q. What is your opinion as to how long ahead the machine shop should be ahead of the other departments?

A. It depends on how much stock they had at the time it started up again.

Q. And that is in accordance with anticipated orders too.

A. Well, it depends on the orders too.

Q. Did the committee talk over the amount of stock that was on hand?

776 A. No, sir.

Q. At no time?

A. Well, I did at one time.

Q. When was that?

A. About August 19th.

Q. About August 19th?

A. Yes, sir.

Q. What did Mr. Sands claim, was there a big stock, or did he claim a small stock?

A. I told him he had more stock than I could recall in the last four or five years.

Q. He said what?

A. He said that is not true.

Testimony of Lada Jindra

A. He said about the same as it always was, so I told him I would check the storage stock and let him know the exact amount he had compared to other years.

Q. Were you in the storage department?

A. Yes, sir.

Mr. Lodish: Let him finish what he started to say.

Q. (By Mr. Stanley). Were you saying anything?

A. So I finally checked it and found that we had twice as much as we had years back; maybe a year ago. I wanted to talk to Garry, but I couldn't see Garry, so I told Herbie that it was about two hundred fifty
777 or three hundred heaters in stock. I told him why he should lay off newer men and if possible give the older men possibly three days a week. He told me—I give him the list as to how much stock and I said, "Yes, you have to keep the men going," and he said—I said, "Why don't you lay some of the men off maybe two weeks before August, in order to give the older men that were laid off a little more work; that is three days a week?" Herbie just laughed at me, and that ended that conversation.

Q. Is that all of that?

A. That is all.

Q. In other words, see if I can boil this down. In the first place, there was a discussion of the amount of stock on August 19th?

A. August 19th; yes, sir.

Q. In the second place, there was a dispute between Mr. Garry Sands and yourself as to whether that was a large amount of stock compared with the needs of the factory, or a small amount of stock compared with the needs of the factory?

A. The argument was if there was more stock in the past or not.

Q. You considered there was enough stock there on hand; is that right?

A. I figured it was twice as much as we usually have.

Q. You figured that would be ample?

A. I figured if he wanted to run the place as
778 he always told us he would, that is before we organized, run it the same way, the union wouldn't have any work. That is why I brought this argument up at that time.

Mr. Stanley: Will you read that answer please?

(Last answer read by the Reporter.)

Q. And you wanted to run it different?

Testimony of Lada Jindra

A. No. He always told us he wanted to give the old men a three day week as we usually worked in the past before we organized.

Q. Did you finally differ with him—I am trying to get to a conclusion—did you finally differ with him, you and Mr. Sands, as to the amount of stock that should be on hand; yes or no?

A. I didn't differ with him. I told him it was twice as much.

Q. You thought he had enough?

A. I thought he had enough. That is his business. I can't tell him what to do.

Q. You were telling him this in effect—withdraw that.

Trial Examiner Danaceau: I think we have gotten substantially what was said, if either party wants to make further inquiry as to exactly what was said.

RE-DIRECT EXAMINATION

Q. (By Mr. Lodish). Just one question, Mr. Jindra, you have been asked a hypothetical question by Mr.

Stanley which you answered, and I want to ask you this. Actually, after July 10th, was there any request made by the management to take people from other departments, I mean request made by the management not to take people from other departments into the machine shop, and did the committee ever insist that they take into the machine shop men from other departments who had not had sufficient experience in the machine shop?

Mr. Stanley: I object.

A. That is too much for me.

Trial Examiner Danaceau: In the first place, it is objectionable because you have two questions.

Mr. Lodish: Withdraw that.

Trial Examiner Danaceau: The question is withdrawn. You want to rephrase your question?

Q. (By Mr. Lodish). Now, tell us whether the committee ever insisted that after July 10th that the management put into the machine shop men taken from other departments who didn't have previous experience in the machine shop?

A. That is going against your contract. You have seniority in the contract, and when they work, they stayed and died there.

Trial Examiner Danaceau: The question was this. After July 10th, 1935, did or didn't your committee, your men, ask the management to transfer from one

Testimony of Lada Jindra

department to the machine shop men who didn't have previous experience in the machine shop?

The Witness: No, sir.

780

RE-CROSS EXAMINATION

Q. (By Mr. Stanley). Well, of course, if you reduce the number of men by calling off everybody who was under a certain number—

A. You mean the old men?

Q. Yes. That would still leave the department short?

A. I will answer that. It was always understood that the old men would be transferred; that is, would be moved around. That is, the old men, because they understood all the work in the shop.

Q. Now we are getting to it. When that happened and the new men were laid off, men whose numbers were higher than thirty-one—

A. Yes.

Q. --then according to the committee's interpretation, men in other departments should be shifted over to the machine shop; is that what you mean or not?

Trial Examiner Danaceau: Just a minute.

A. That was not—

Trial Examiner Danaceau: Are you raising an objection?

Mr. Lodish: Yes, sir.

Trial Examiner Danaceau: What is the objection?

Mr. Lodish: The question started with the phrase when that happened. I think the question should be preceded with "did that happen." No testimony
781 that that did happen.

Mr. Stanley: Read the question, Mr. Reporter.

(Last question read by the Reporter.)

Trial Examiner Danaceau: Are you withdrawing it?

Mr. Stanley: Strike it out.

Q. (By Mr. Stanley). In the first place, when the layoff came of men whose numbers were higher than thirty-one—

A. July 30th, yes.

Q. What?

A. About July 30th.

Q. Whenever that was, then of course they laid off new men in the machine shop; didn't they?

A. Yes, sir.

Testimony of Lada Jindra

Q. And at about that time and there were men, older men, in other departments; weren't there?

A. That I really don't know. That is something I don't know.

Q. Well, necessarily all the old men were working?

A. Yes, sure.

Q. And some were in other departments?

A. Yes, sir; they were scattered around.

Q. Now suppose—not suppose, because Mr. Sands already told you he wanted to work up in the machine shop?

A. He didn't.

Q. Then what was all this discussion about a shortage of stock where you go back and see whether there was a shortage; how did that happen?

782 A. Here is my argument. On August 19th the management wanted to close the plant down, and I thought if they were doing right, why did they build so much stock? Why didn't they have the old men build it and give us the benefit of work instead of laying us off.

Q. Well, then, what did you mean by this just a moment ago when you said that you always understood that the old men would be transferred; transferred where?

A. You mean just the old men?

Q. Yes.

A. The management always does that. We don't say yes or no against it.

Q. What you mean is that when that situation came about in the machine shop, for instance, that the old men would be transferred into another department?

A. I haven't done it in there.

Q. What did you mean when you said in your testimony that the—

A. It was always worked there, I understood it was worked that way.

Q. You do agree with him what you were contending that the old men would be transferred over to other departments?

A. That depends on the management.

Q. But you understood that the management should do that; is that right?

A. I wouldn't argue that point; that is up to the management.

Q. That is what you were asking?

Testimony of Lada Jindra

A. Well, if they wanted to hire new men, they couldn't do it with the article, that all new men be laid off before old men.

Q. Suppose they wanted to bring back men low in seniority into a department, you still would think that an older man should be transferred into that department; don't you?

A. No; not necessarily.

Q. Then what did you mean, that the old men should be transferred?

A. Well, I will give you an example.

Trial Examiner Danaceau: I might at this time say that I think you have gone into this a good deal by other witnesses. It is Clause No. 7 in the contract, in addition to the clause which you referred to which reads that all new employees be laid off before old employees in order to guarantee if possible at least one week's full time before the working week is reduced to three days.

Mr. Stanley: That's all right. That has happened. I am talking about a situation where they again wanted to start up one department and, if the Examiner please, that happens there on the three days. They wanted to start up one department. I am talking about that situation where a choice between a man who has a lower seniority in Department A than an employee in Department B who has a higher seniority. Now, as I understand, his contention is that the committee

784 still thought that there should be a transfer.

Trial Examiner Danaceau: This witness states, in his opinion, he has testified that he makes a distinction between the old original men and the new men for the reason that for many years past the company has been using men in all departments, and for that reason he makes a distinction between the old men and the new men; is that right?

The Witness: That's right. And they had experience.

Q. (By Mr. Stanley). You still thought that the old men had a right to be transferred to the other departments?

A. Yes, as far as this one clause goes.

Q. By that one clause, you mean clause five?

A. Wait a minute. Not so fast.

Testimony of Lada Jindra

Trial Examiner Danaceau: Clause Seven.

The Witness: That all new employees be laid off before old employees.

Q. (By Mr. Stanley). That is the one the Examiner just read?

A. Wait a minute. There is something else in here; that's it; that all new employees should be laid off before old employees. There is no sense—

Q. Wait a minute. You haven't read all of that

A. Well, I stopped there. I will stop there.
785 That is one thought. Wait until I get to another one.

Q. I think that is exactly it. In other words, you don't want me to read the rest of the sentence?

A. I will read it if you wish me to.

Q. No. You have given your position.

Mr. Lodish: Mr. Examiner, we have spoken about another witness who is out of town and he can't come until 5:45 but we will let that go now.

Trial Examiner Danaceau: You have no further rebuttal at this time. You wish to offer any rebuttal, Mr. Smoyer?

Mr. Smoyer: We wish to renew our motion.

Trial Examiner Danaceau: The record will show the respondent renews the motion to dismiss and the Examiner is reserving his ruling on the motion. Anything further, gentlemen?

Mr. Smoyer: No.

Mr. Witt: No.

Trial Examiner Danaceau: At this time we will adjourn.

(Whereupon, at 5:30 o'clock p. m., November 30, 1935, the hearing in the above-entitled matter was closed.)

BOARD'S EXHIBIT No. 3

(Witness: G. Sands)

THE TAX COMMISSION OF OHIO

Commissioners
QUINCY A. DAVIS
 Chairman

COLUMBUS

CARLTON S. DARGUSCH
 Vice-Chairman

Commissioners
JAMES DUNN, JR.
ANTHONY J. KRAUS

GEO. A. EDGE
 Secretary

Address all mail to Tax Commission, State Office Bldg.

**THE UNITED STATES OF AMERICA,
 THE STATE OF OHIO,
 OFFICE OF THE TAX COMMISSION OF OHIO.**

I, Geo. A. Edge, Secretary of THE TAX COMMISSION OF OHIO, and being the officer who, under the Constitution and Laws of said State, is duly constituted the keeper of the records of THE TAX COMMISSION OF OHIO, and empowered to authenticate exemplifications of the same, do hereby certify that the annexed instrument is an exemplified copy, carefully compared by me, with the original record now in my official custody as the Secretary of THE TAX COMMISSION OF OHIO, and found to be a true and correct copy of the ANNUAL REPORT OF A DOMESTIC CORPORATION FOR PROFIT, filed by The Sands Manufacturing Company for the purpose of the franchise tax for the year 1935; that said exemplification is in due form, made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States of America.

IN TESTIMONY WHEREOF, I have hereunto attached my official signature and the official SEAL OF THE TAX COMMISSION OF OHIO AT COLUMBUS, this 12th day of November A. D. 1935.

GEO. A. EDGE,
 Secretary of
 The Tax Commission of Ohio.

(SEAL)

1935

Annual Report of Domestic Corporation for Profit

... of China on or before the 31st day of March, 1935.

2021

1935

Annual Report of Domestic Corporation for Profit

This report must be filed with the Tax Commission of Ohio on or before the 31st day of March, 1935.
A corporation which filed its Articles of Incorporation with the Secretary of State on or after January first, 1933, will not be required to file an annual report until 1936.

N. B. All items in this form must be answered in full.

The Tax Commission reserves the right to reject any incomplete report.

Where possible, report should be typewritten.

Submit one copy for reference. Additional copies will be sent upon receipt of postage covering mailing.

Read carefully all instructions.

To the Tax Commission of Ohio,
Columbus, Ohio.

The undersigned, an Ohio corporation for profit, reports as follows:—

1. Name of corporation..... The Sands Manufacturing Company
2. Date of filing articles of incorporation with Secretary of State..... 12/20/16
3. Location of principal place of business in Ohio..... Beachwood
4. The names of its Officers and Directors, with the post office address of each, are:—

	NAME	STREET No.	CITY	STATE	COUNTY
President	<u>Louis Sands</u>	<u>5407 Sweeney Ave.</u>	<u>Cleveland</u>	<u>Ohio</u>	<u>Cuyahoga</u>
Secretary and Treasurer	<u>Garry Sands</u>	<u>5407 Sweeney Ave.</u>	<u>Cleveland</u>	<u>Ohio</u>	<u>Cuyahoga</u>
Board of Directors	<u>above and</u>				
	<u>Joseph M. Sands</u>	<u>5407 Sweeney Ave.</u>	<u>Cleveland</u>	<u>Ohio</u>	<u>Cuyahoga</u>

5. Agent appointed in accordance with requirements of Section 8623-129 as amended 113 Ohio Laws:

Joseph M. Sands

Name

5407 Sweeney Avenue

No.

Street

Cleveland Ohio

City

State

Beachwood Ohio

SAND

The undersigned, an Ohio corporation for profit, reports as follows:—

1. Name of corporation..... The Sands Manufacturing Company
2. Date of filing articles of incorporation with Secretary of State..... 12/20/16
3. Location of principal place of business in Ohio..... Beachwood
4. The names of its Officers and Directors, with the post office address of each, are:—

	NAME	STREET No.	CITY	STATE	COUNTY
President	<u>Louis Sands</u>	<u>5407 Sweeney Ave.</u>	<u>Cleveland</u>	<u>Ohio</u>	<u>Cuyahoga</u>
Secretary and Treasurer	<u>Garry Sands</u>	<u>5407 Sweeney Ave.</u>	<u>Cleveland</u>	<u>Ohio</u>	<u>Cuyahoga</u>
Board of Directors	<u>above and</u>				
	<u>Joseph M. Sands</u>	<u>5407 Sweeney Ave.</u>	<u>Cleveland</u>	<u>Ohio</u>	<u>Cuyahoga</u>

5. Agent appointed in accordance with requirements of Section 8623-129 as amended 113 Ohio Laws:

Joseph M. Sands

Name

5407 Sweeney Avenue

No.

Street

Cleveland

City

Ohio

State

6. Officer or agent in charge of business in Ohio.....

SANDS

Name

Business Address

City

State

7. Person to whom notices are to be mailed.....

SANDS

Name

Business Address

City

State

8. Nature of business in which engaged..... Mfgs. Water Heaters

9. Date of beginning of current annual accounting period is..... January 1st

Note 1. The information called for in Items 10 to 20, inclusive, is to be in accordance with the respective values and amounts shown by the books of account of the corporation as of the beginning of the current annual accounting period. THIS INFORMATION, SO FAR AS APPLICABLE, MUST BE ANSWERED IN FULL; IF NOT SO ANSWERED, THIS RETURN WILL NOT BE ACCEPTED AND THE PENALTY FOR FAILURE TO FILE RETURN WILL BE ASSESSED.

10. Capital stock issued and outstanding:

(a) Common	100	Shares	100	Par Value	Total	\$ 10,000
(b) Preferred		Shares		Par Value	Total	\$
(c) Other		Shares		Par Value	Total	\$
(d) No par		Shares at \$		each	Total	\$
(e) Total issued and outstanding stock						\$ 10,000
(f) Surplus (whether earned or unearned) (or deficit)						\$ 254,723
(g) Undivided profits						\$
(h) Reserves, not including reserves for depletion, depreciation and taxes due and payable in the year 1935. (See Schedule, Item 20)						\$
(i) Total of capital, surplus, undivided profits and reserves as above, e, f, g, and h						\$ 254,723

11. Value of goodwill as carried on the books of the corporation..... \$ 16,000
(If goodwill is carried on books, CERTIFIED BALANCE SHEET as of date of beginning of current annual accounting period MUST BE FURNISHED under the law; otherwise the item will not be allowed as a deduction.)
12. *Gross book value of all property, real and personal, owned or used in Ohio..... \$ 203,310
(Be guided by Note 3 on this form for situs of intangibles.)
13. Gross book value of all property, real and personal, owned or used outside of Ohio..... \$ 20,347
14. Gross total book value of all property, 12 plus 13..... \$ 223,657
15. Entire amount of liabilities as of date of beginning current annual accounting period (Indebtedness Liabilities and Reserves)..... \$ 10,934
16. The assessed value of the real estate as of January 1, 1935, is..... \$ 11,100
17. Entire amount of business done during last preceding annual accounting period (Ohio business and extrastate business both included)..... \$ 710,576
18. Amount of extrastate business done during same period (See Note 2)..... \$ 60,342
19. Amount of Ohio business done during same period..... \$ 259,234
20. Schedule of reserves as carried on the books of the corporation showing the object and amount of each.

OBJECT	AMOUNT	Annual Rates of Depreciation and Depletion
(a) Total of all reserves		
(b) Deduct sum of reserves shown above for depletion, depreciation and taxes due and payable for 1935.		
(c) Book value of all reserves other than those deducted above. (This amount should agree with item 10-h.)		

*Gross book value of all property, real and personal, indicates all assets, tangible and intangible, as contained in the books of the corporation such as real estate, lands, buildings, cash, notes receivable, accounts receivable and any and all other assets of every description with no deduction therefrom for liabilities.

14. Gross total book value of all property, 12 plus 13..... \$203,657
15. Entire amount of liabilities as of date of beginning current annual accounting period
(Indebtedness Liabilities and Reserves) \$ 10,334
16. The assessed value of the real estate as of January 1, 1935, is..... \$ 31,100
17. Entire amount of business done during last preceding annual accounting period
(Ohio business and extrastate business both included)..... \$319,576
18. Amount of extrastate business done during same period (See Note 2)..... \$ 60,542
19. Amount of Ohio business done during same period..... \$259,034
20. Schedule of reserves as carried on the books of the corporation showing the object
and amount of each.

OBJECT	AMOUNT	Annual Rates of Deprecia- tion and Depletion
(a) Total of all reserves		
(b) Deduct sum of reserves shown above for depletion, depreciation and taxes due and payable for 1935.		
(c) Book value of all reserves other than those de- ducted above. (This amount should agree with Item 10-h.)		

*Gross book value of all property, real and personal, indicates all assets, tangible and intangible, as contained in the books of the corporation such as real estate, lands, buildings, cash, notes receivable, accounts receivable and any and all other assets of every description with no deduction therefrom for liabilities

The Company

By its Treasurer

The State of County of, ss:

being duly sworn, deposes and says that he is
the of The Company
that he executed the foregoing report in the name of and on behalf of said corporation, and caused its corporate seal to be
thereto affixed; that he was authorized to make said statement, and to execute the same, by authority of the corporation and
further, such corporation has not during the preceding year, directly or indirectly paid, used or offered, co-rented or agreed
to pay or use, any of its money or property for, or in aid of, any political party, committee or organization, or for, or in aid of,
any candidate for political office, or for nomination for any such office, or in any manner used any of its moneys or property
for any political purpose whatever or for the reimbursement or indemnification of any person or persons for moneys or
property so used, and that he is an officer of said corporation, having knowledge of the facts herein set forth, and that the
statements contained in said report and in this affidavit are true.

Sworn to before me, and subscribed in my presence, this day of A. D. 1935

Notary Public

Note 2:—For purposes of this report in case of a corporation which does business within and without the state its entire business may be divided into two classes

1. Ohio business,
2. Extrastate business.

Ohio business includes all business done or sales made in this state, all business originating in this state regardless of where the point of delivery may be and all business terminating in Ohio or sales with deliveries in Ohio, regardless of the point of origin.

Extrastate business includes sales made to, or business done with, persons outside of Ohio, from a plant or warehouse maintained by the corporation outside of Ohio.

Sales made to, or business done with, residents of Ohio or sales made to non-residents from a plant or warehouse in this state are not to be considered extrastate business, but are to be considered Ohio business.

Note 3:—In determining the amount or value of intangible property, including capital investments, owned or used in this state by either a domestic or foreign corporation, the reporting company shall be guided by the provisions of section 5326-1 and 5326-2 of the General Code, except that investments in the capital stock of subsidiary corporations at least fifty-one per centum of whose common stock is owned by the reporting corporation shall be allocated in and out of the state in accordance with the value of physical property in and out of the state representing such investments. **FOR THE GUIDANCE OF THE COMMISSION, IF THE REPORTING CORPORATION LISTS ASSETS WITHIN AND WITHOUT THE STATE, OR ALL WITHOUT THE STATE, THERE MUST BE APPENDED TO THE REPORT AN ITEMIZED STATEMENT OF THE ASSETS, LISTING THOSE WITHIN OHIO AND THOSE WITHOUT THE STATE. IF ANY CAPITAL INVESTMENTS ARE LISTED IN ASSETS LOCATED WITHOUT THE STATE, THERE MUST ALSO BE APPENDED TO THE REPORT A LIST OF SUCH INVESTMENTS SO PLACED WITHOUT OHIO AND IF ANY OF THEM ARE IN SUBSIDIARY CORPORATIONS FIFTY-ONE PER CENTUM OR MORE OF WHOSE COMMON STOCK IS OWNED BY THE REPORTING CORPORATION, KINDLY SO DESIGNATE AND GIVE THE LOCATION OF THE PHYSICAL ASSETS OF THE SUBSIDIARIES.**

Note 4:—If it is sought to have the value of the issued and outstanding shares of stock reduced by reason of the fact that the value of the assets as carried on the books exceeds their fair value, the corporation **MUST FILE ITS APPLICATION FOR SUCH REDUCTION WITH THIS REPORT** and must furnish the tax commission with satisfactory proof in support thereof.

No fair value claim will be considered **UNLESS ACCOMPANIED BY A CERTIFIED BALANCE SHEET FILED AS A PART OF THE REPORT.** If applicant owns property in and out of this state, reductions sought must be set up separately for each item in and out of Ohio. Such claim for reduction must be set up on a separate sheet in any form desired.

Make no entries in this part of the return. It is reserved for use of The Tax Commission.

Total, Item 10-i		\$
Goodwill		\$
	Remainder	\$
Total allowances if claimed and granted		\$
Entire value of Stock		\$

Ohio Property	\$	Total Property	\$
Excess	\$	Excess	\$
Net Value	\$	Net Value	\$

or warehouse in this state are not to be considered extrastate business, but are to be considered Ohio business.

Note 3:—In determining the amount or value of intangible property, including capital investments, owned or used in this state by either a domestic or foreign corporation, the reporting company shall be guided by the provisions of section 5328-1 and 5328-2 of the General Code, except that investments in the capital stock of subsidiary corporations at least fifty-one per centum of whose common stock is owned by the reporting corporation shall be allocated in and out of the state in accordance with the value of physical property in and out of the state representing such investments. **FOR THE GUIDANCE OF THE COMMISSION, IF THE REPORTING CORPORATION LISTS ASSETS WITHIN AND WITHOUT THE STATE, OR ALL WITHOUT THE STATE, THERE MUST BE APPENDED TO THE REPORT AN ITEMIZED STATEMENT OF THE ASSETS, LISTING THOSE WITHIN OHIO AND THOSE WITHOUT THE STATE. IF ANY CAPITAL INVESTMENTS ARE LISTED IN ASSETS LOCATED WITHOUT THE STATE, THERE MUST ALSO BE APPENDED TO THE REPORT A LIST OF SUCH INVESTMENTS SO PLACED WITHOUT OHIO AND IF ANY OF THEM ARE IN SUBSIDIARY CORPORATIONS FIFTY-ONE PER CENTUM OR MORE OF WHOSE COMMON STOCK IS OWNED BY THE REPORTING CORPORATION, KINDLY SO DESIGNATE AND GIVE THE LOCATION OF THE PHYSICAL ASSETS OF THE SUBSIDIARIES.**

Note 4:—If it is sought to have the value of the issued and outstanding shares of stock reduced by reason of the fact that the value of the assets as carried on the books exceeds their fair value, the corporation **MUST FILE ITS APPLICATION FOR SUCH REDUCTION WITH THIS REPORT** and must furnish the tax commission with satisfactory proof in support thereof.

No fair value claim will be considered **UNLESS ACCOMPANIED BY A CERTIFIED BALANCE SHEET FILED AS A PART OF THE REPORT.** If applicant owns property in and out of this state, reductions sought must be set up separately for each item in and out of Ohio. Such claim for reduction must be set up on a separate sheet in any form desired.

Make no entries in this part of the return. It is reserved for use of The Tax Commission.

Total, Item 10-i	\$.....
Goodwill	\$.....
Remainder	\$.....
Total allowances if claimed and granted	\$.....
Entire value of Stock	\$.....

Ohio Property.....	\$.....	Total Property.....	\$.....
Excess	\$.....	Excess	\$.....
Net Value	\$.....	Net Value	\$.....

Ohio Property (12) \$.....	=	%
Total Property (14) \$.....		
Ohio Business (19) \$.....	=	%
Total Business (17) \$.....		
Total Per Cent		%
One-half Total Per Cent		%
X Total Capital \$.....	=	
Taxable Value \$.....		

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

23

38-99



BOARD'S EXHIBIT No. 3

b DC

No. 15255

STATE OF OHIO
Franchise Tax Return



1935

Domestic Corporation
FOR PROFIT

ANNUAL REPORT
OF

The Sands Manufacturing Co.

Company

VERNON M. SANDS
Person to whom tax notice is to be sent

517 Broadway Avenue
Business Address—Street and Number

Cleveland, Ohio.
City and State

(Above Must Be Filled in by Company)

Stock Value on which tax
is to be based - - - - - \$ 230,157

(Make No Entry Here)

Filed in the office of the Tax Commission of
Ohio at Columbus, Ohio.

Mar 20 1935

NOTICE

This Report Must Be Filed as
Soon After January 1st, 1935,
as Possible and NOT Later
Than March 31st, 1935.

Failure to File Report Will Result
in Cancellation of the Cor-
porate Charter.

BOARD'S EXHIBIT No. 4

(Witness: G. Sands)

AGREEMENT

THIS AGREEMENT made and entered into this third day of September, 1935, by and between the SANDS MANUFACTURING COMPANY, Party of the First Part, hereinafter called the Employer, and DISTRICT No. 54 of the INTERNATIONAL ASSOCIATION OF MACHINISTS, affiliated with the American Federation of Labor, Party of the Second Part, hereinafter called the Union.

WITNESSETH :

WHEREAS, it is mutually desirable to the parties hereto that ways and means be established of mutually settling all differences and misunderstandings between them without cessation of business and loss of employment;

WHEREAS, the parties hereto desire to establish a standard of conditions between the Employer and the Employees during the term of this Agreement and desire to regulate the mutual relations between them with the view of securing harmonious cooperation between them and averting disputes;

NOW THEREFORE, in consideration of the mutual promises and obligations, the parties hereto agree as follows:

ARTICLE I.

This Agreement shall be in full force and effect on and after the third day of September, 1935, and continue until the third day of September, 1936, and thereafter from year to year unless changed by mutual consent of the parties hereto. If either party hereto is desirous of making a change in the terms before renewing this Agreement, it shall give notice in writing on or before August 1, 1936, to the other party and any negotiations with respect to said changes shall be concluded on or before August 20, 1936.

ARTICLE II.

It is mutually agreed by and between the parties hereto that at the present time a large number of the production Employees of the Party of the First Part

Board's Exhibit No. 4

are members of DISTRICT No. 54 of the INTERNATIONAL ASSOCIATION OF MACHINISTS, affiliated with the American Federation of Labor, but there are a small percentage of the said Employees who do not belong to that or any other Union. It is agreed by the Party of the Second Part that during the life of this Agreement, it will not use force, coercion, duress, or any other unfair means to compel or intimidate Employees into joining its or any other Union, it being definitely understood, however, that the Party of the Second Part may attempt by fair and open persuasion and discussion to induce said Employees to join its Union. It is further understood that the Employer will in no way or by no means dissuade said Employees from joining said Union, but rather to suggest and make it known to said Employees that the Employer has no objection to any Employees' belonging to said Union.

Party of the First Part further agrees that wherever possible and practicable in employing new help, it will employ members in good standing of DISTRICT No. 54 of the INTERNATIONAL ASSOCIATION OF MACHINISTS, affiliated with the American Federation of Labor, it being understood, however, that the Employer has a right to employ whom it may see fit for the position in question. If the man who is hired for said position is not a member of the Union, the Employer, after a trial for thirty (30) days, shall make it known to and advise said Employee that it would be to the mutual benefit of the parties hereto if said Employee would make application to become a member of DISTRICT No. 54 of the INTERNATIONAL ASSOCIATION OF MACHINISTS, affiliated with the American Federation of Labor.

It is mutually agreed by and between the parties hereto that this Agreement applies to Employees of production departments only and that members of the Management of the Company, Chief Engineer, General Superintendent, Shipping Clerk, Millwright, Porter, Messenger Boy, Firemen and Watchmen shall not be included in the terms of this Agreement.

ARTICLE III.

It is mutually agreed that the regular working day of each Employee shall not exceed eight (8) hours in consecutive order within any twenty-four (24) hour period, and the regular working week shall be five (5)

Board's Exhibit No. 4

days: Monday, Tuesday, Wednesday, Thursday, and Friday.

All work performed on Saturdays shall be paid for at the rate of time and one-half.

The first four (4) hours of overtime worked in any one day shall be paid for at the rate of time and one-half, and overtime in excess of four (4) hours in any one day shall be paid for at the rate of double time, provided however, that all work performed, except by Firemen and Watchmen, on Sundays, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day shall be paid for at the rate of double time, irrespective of the number of hours worked. When any of the above holidays fall on Sunday, the day observed by the State or Nation shall be considered the holiday.

ARTICLE IV.

It is mutually agreed that when Employees report for work at the regular starting time and are prevented from performing services that day by conditions beyond their control, such Employees shall be paid for actual time held with a minimum of three (3) hours, unless these Employees have been notified at their homes before the time they would normally leave home for work.

ARTICLE V.

It is mutually agreed by and between the parties hereto during slack periods of business or when it becomes necessary to reduce expenses that the regular working day shall be reduced to six (6) hours and the factory shall operate three (3) days a week before laying off any Employees. Should lay-offs become necessary in any department, the Employer agrees that the same shall be made according to seniority in said department wherever practical.

Seniority rights shall prevail for all men who were members of DISTRICT No. 54 of the INTERNATIONAL ASSOCIATION OF MACHINISTS, affiliated with the American Federation of Labor, at the time this Agreement was signed and who in the past were employed by the SANDS MANUFACTURING COMPANY and worked under membership of DISTRICT No. 54 of the INTERNATIONAL

Board's Exhibit No. 4

ASSOCIATION OF MACHINISTS, affiliated with the American Federation of Labor.

It is mutually agreed by and between the parties hereto that Key Men or Foremen of any department shall have preference, at the discretion of the Employer, over seniority rights should it be necessary for a factory lay-off.

ARTICLE VI.

It is mutually agreed by and between the parties hereto that:

(a) The Employer shall not discriminate against any Employee because of his or her services as Shop Steward or Committee member.

(b) The seniority record of the Employees shall be available to the Representatives. Seniority rights shall be forfeited after an absence of one (1) year, or if an Employee quits of his or her own accord, or is discharged for just cause, or refuses to return to work when recalled.

(c) Intoxication, dishonesty, incompetency, insubordination, or failure to perform his usual customary duties, or absence from duties for more than three (3) days without notifying the Employment Office shall constitute cause for discharge.

(d) When hiring new help, no one who is related to a Foreman shall be assigned to duty under such Foreman.

ARTICLE VII.

It is mutually agreed by and between the parties hereto that:

(a) Any Employee who believes that he has been unjustly treated shall complain to his Committeeman who shall take the complaint directly to the Foreman involved. Failing in satisfactory adjustment with the Foreman, the Committee member shall take the matter up directly with the proper Union officials for adjustment.

(b) No grievances shall be carried to the point where cessation of work takes place, either on volun-

Board's Exhibit No. 4

tary act of the Employees or by order of the Employer, but any dispute over matters not covered by this Agreement shall be carried through to arbitration unless peacefully adjusted by the parties involved. The Employer shall select one (1) member of the Arbitration Committee, one (1) shall be selected by the Union, and these two (2) shall select a third impartial member. Both parties to this Agreement agree to be bound by the decisions of the Arbitration Committee.

ARTICLE VIII.

It is mutually agreed by and between the parties hereto that:

(a) All men who were members of DISTRICT No. 54 of the INTERNATIONAL ASSOCIATION OF MACHINISTS affiliated with the American Federation of Labor, at the time this Agreement was signed and who in the past were employed by the SANDS MANUFACTURING COMPANY and worked under membership of DISTRICT No. 54 of the INTERNATIONAL ASSOCIATION OF MACHINISTS, affiliated with the American Federation of Labor, shall receive the same hourly wage rate as when last employed by the SANDS MANUFACTURING COMPANY. All Employees referred to in this Article shall receive a ten per cent (10%) increase in hourly wages after a period of thirty (30) working days from the signing of this Agreement.

(b) Any new Employees employed during the life of this Agreement shall receive the minimum wage scale which prevails for that type of work in the factory of the SANDS MANUFACTURING COMPANY for a period of ninety (90) working days. After that time, his hourly rate shall be increased ten per cent (10%).

(c) All Employees under this Agreement will automatically receive a five per cent (5%) increase in hourly wages six (6) months from the signing date of this Agreement.

Signing for the Employer:

THE SANDS MANUFACTURING COMPANY,
(Signed) F. GARRY SANDS, Treas.

Signing for the Employees:

(Signed) JAMES P. McWEENY,
Pres. Metal Trades Council.

(Signed) CHAS. L. MILZ,
Dist. No. 54, I. A. of M.

BOARD'S EXHIBIT No. 5

Main 9221

(COPY)

Local No. 5

M.E.S.A.

Mechanics Educational Society of America

130 Engineers Building

Cleveland, Ohio

May 13, 1935.

Mr. Garry Sands,
5701 Sweeney Ave.,
Cleveland, Ohio.

Dear Sir:

The undersigned have been elected to represent the employees in the Sands Mfg. Co. and have been authorized to submit the following demands for your consideration:

1. That all old employees be given a 5 cent per hour increase in pay.
2. That all men who are classified as new men and who have worked in the factory for a period of thirty days or more since August 1934, shall be given 8½ cents per hour increase in pay.
3. In case of a shortage of work and men are to be laid off, they shall be given 48 hours notice.

We are asking that you make answer to these demands not later than 10:00 A.M. Wednesday, May 15, 1935.

(Signed) TONY J. MORACO,

(Signed) C. J. DUSEK.

The Committee.

H. F. POTTER (Signed)
State Chairman.

RESPONDENT'S EXHIBIT No. 1-A**UNITED STATES OF AMERICA****BEFORE****THE NATIONAL LABOR RELATIONS BOARD****EIGHTH REGION**

In the matter of

THE SANDS MANUFACTURING COMPANY,

and

MECHANICS EDUCATIONAL SOCIETY,
OF AMERICA.

Case No.

VIII

C-2

STIPULATION

Reserving an exception to the subpoena duces tecum issued by the National Labor Relations Board November 2, 1935 and served upon Garry Sands, Secretary of the respondent herein, on or about November 12, 1935, further excepting to the purported right of the National Labor Relations Board to compel the production of respondent's books and records of its proceedings, and further excepting to their competency, materiality and relevancy, and without intending to waive said objections and exceptions, the respondent states the following to be the facts as summarized from its books and records:

1. That during the period January 1, 1935 to October 1, 1935 it purchased raw materials as follows:

ITEM	TOTAL PURCHASES	STATES OF SELLERS	OHIO PURCHASES
Brass	\$ 36,894.70	Ohio, Mich., Conn.	\$27,356.24
Castings	44,737.41	Ohio	44,737.41
Misc. Material	20,648.31	Ohio, Mass., Mich. New York, Ill., Wisc., and Odds & Ends other states	16,113.34
Sheet Iron	7,856.67	Ohio	7,856.67
Steel Tanks	19,359.70	W. Va.	
Tubing	44,513.07	Mich., Ohio	5,473.24
Packing Material	7,818.65	Ohio, Virginia	5,079.41
	\$181,828.51		\$106,616.31

Total purchases from states other than Ohio \$75,212.20.

2. That during the period January 1, 1935 to October 31, 1935 its gross sales, less merchandise returned, amounted to \$218,117.08. That its total Ohio sales were

Respondent's Exhibit No. 1-A

the same period were \$34,091.17, its total sales outside of the State of Ohio therefore being \$284,025.91.

3. That the respondent's products, shipped by it during the period January 1, 1935 to October 31, 1935 may be classified as follows:

- A. Tank Heaters
- B. Storage Heaters
- C. Instantaneous Heaters
- D. Valves and other parts

Respondent further states that into each of the states of the United States hereinafter listed it ships those of its products corresponding to the designation after the name of each state:

STATE	PRODUCT
Alabama	A, B, D
Alaska	no shipments
Arizona	A, B, D
Arkansas	A, B, C, D
California	A, B, C, D
Colorado	A, B, C, D
Connecticut	A, B, C, D
Delaware	A, D
District of Columbia	A, B
Florida	A, B, D
Georgia	A, B, D
Idaho	A, D
Illinois	A, B, C, D
Indiana	A, D
Iowa	A, B, D
Kansas	A, B, D
Kentucky	A, B, D
Louisiana	A, B, C, D
Maine	A, B, C, D
Maryland	A, D
Massachusetts	A, B, C, D
Michigan	A, B, D
Minnesota	A, B, D
Mississippi	A, B, D
Missouri	A, B, D
Montana	A, B, D
Nebraska	A, B, D
Nevada	A, B, D
New Hampshire	A, B, C, D

Respondent's Exhibit No. 1-A

STATE	PRODUCT
New Jersey	A, B, D, C
New Mexico	A, B, D
New York	A, B, C, D
North Carolina	A, D
North Dakota	A, B, C, D
Ohio	A, B, C, D
Oklahoma	A, B, D
Oregon	A, D
Pennsylvania	A, B, C, D
Rhode Island	A, B, C, D
South Carolina	A, D
South Dakota	A, B, C, D
Tennessee	A, B, D
Texas	A, B, C, D
Utah	A, B, D
Vermont	A, B, D
Washington	A, D
West Virginia	A, D
Wisconsin	A, B, C, D
Wyoming	A, B, D

4. That the following represents a true and correct list of the points to which and people to whom respondent ships its products on consignment:

WAREHOUSE	ADDRESS	SALESMAN
Automatic Water Heater Sales Co.	217 N. Wells St., Chicago, Ill.	Same
Essex Warehouse Co.	600 Ogden St., Newark, N. J.	H. A. Collins and J. M. Buday
Adams Transfer & Storage Co.	228-234 W Fourth St., Kansas City, Mo.	Geo. E. Cooke
Fagan-Andrews Co.	181 W. Michigan St., Milwaukee, Wisc.	Same
Federal Steam Specialties Co.	120 E. Main St., Oklahoma City, Okla.	None
Orleans Warehouse Corp.	428 Julia St., New Orleans, La.	Gas Appliance
Tyler Warehouse Co.	2nd & Dickinson St., St. Louis, Mo.	Randolph Wohltman
Missouri Natural Gas Properties	Framington, Poplar Bluff, Bonne Terre, Festus & Flat River, Mo.	" "
J. M. Butts	272 Marietta St. Atlanta, Ga.	Same
Huey & Philip Hdwe. Co.	Griffin & Collins Sts., Dallas, Tex.	Sand's Htr., Dallas
Springer's Warehouse Co.	Albuquerque, N. M.	L. O. Kohlhaas
L. H. Lehnen Co.	1510 S. Newberry Ave., Chicago, Ill.	Same

Respondent's Exhibit No. 1-A

WAREHOUSE	ADDRESS	SALESMAN
F. H. Maloney	1432 Pacheco St. San Francisco, Cal.	Same
S. Paul Terminal Warehouse	St. Paul, Minn.	J. H. Fagan
Mr. Lewis Sands	450 N. Rossmore Ave., Los Angeles, Calif.	None
Hadley Transfer & Storage Co.	45-49 E. Broadway, Salt Lake City, Utah	Stratford
Sands Heater Co. of Houston, Inc.	3616 Main St., Houston, Tex.	Same
Boston & Taunton Trans. Co.	Battery Wharf, Boston, Mass.	Sands Heater Co. of N. E.
Sands Service Co.	487 Tompkins Ave., Brooklyn, N. Y.	Jack Scharff
Royal Warehouse Corp.	3rd, 4th & Haywood Sts., Long, Island City, N. Y.	" "
Pennsylvania Warehousing & Safe Deposit Co.	23rd & Race Sts., Philadelphia, Pa.	H. O. Tustin
Heffron Co.	Washington, D. C.	None

5. That the following is a true and correct list of its representatives and their territories, and the commission paid to them by respondent during the period January 1, 1935 to October 31, 1935:

REPRESENTATIVE	TERRITORIES	COMMISSION
Geo. E. Cooke Co., P. O. Box No. 235 Atchison, Kansas	Oklahoma, Iowa Kansas	\$ 376.97
Geo. W. Smith, 5212 Celia Place, Pittsburgh, Pa.	Pittsburgh and suburbs	903.34
Russell D. Knight Co., 2314 N. Broad St., Philadelphia, Pa.	Maryland, Ithaca, Odessa, Virginia	641.56
J. H. Lehnner Co., 1510-12 S. Newberry Ave., Chicago, Ill.	Chicago, Ill. and suburbs	231.65
A. D. Wright, 12795 Birwood Ave., Detroit, Mich.	Michigan	943.25
The Sands Heater Co., 110 Broad St., Boston, Mass.	Massachusetts, Rhode Island, Connecticut, New Hampshire	745.76
H. W. Duschak, 1340 Amherst St., Buffalo, N. Y.	Syracuse, N. Y., Elmira, Bing- hampton, Buffalo, Erie, Olean, Watertown, Plattsburgh, Sara- nac Lake, Glens Falls, Ro- chester, Auburn, Kingston, Waverly, Jamestown, Niag- ara Falls	358.28
J. M. Butts, 272 Marietta St., Atlanta, Ga.	Georgia, Florida	170.82
Sands Heater Co., 500 Sunset St., Dallas, Tex.	Texas	521.64

Respondent's Exhibit No. 1-A

REPRESENTATIVE	TERRITORIES	COMMISSION
L. H. Stratford Corp., P. O. Box 2173, Salt Lake City, Utah.	Utah, Montana, Colorado, Wyoming, Idaho, Wash- ton, Oregon	17.57
J. M. Buday, 327 Edge Ave., Jersey City, N. J.	New Jersey	144.00
The E. J. Hungerford Co., 1100 E. 145th St., Cleveland, Ohio.	Cleveland, Ohio	352.90
The M. R. Emrich Co., 191 N. Portage Path, Akron, Ohio.	Ohio	719.30
L. O. Kohlhaas, P. O. Box 723, Albuquerque, N. M.	New Mexico	182.11
Gas Appliance Co., Inc., 818 Carondelet St., New Orleans, La.	Louisiana, Mississippi, Alabama	1,923.58
Sands Heater Co., 3616 Main St., Houston, Tex.	Houston, Texas	No commission
J. H. Fagan Co., 161 W. Wisconsin Ave., Milwaukee, Wisc.	Wisconsin, Minnesota, North and South Dakota	4,210.34
Randolph Wohltman, 315 N. 7th St., St. Louis, Mo.	St. Louis, Missouri, E. St. Louis, Ill., some of Kansas	637.34
Jack Scharff, 154 Nassau St., New York, N. Y.	City of New York and suburbs	162.86
Henry O. Tustin, 23 & Race St. S., Philadelphia, Pa.	Philadelphia, Pa.	266.34
Sands Water Heater Co., 913 Main St., Cincinnati, Ohio	Cincinnati, Ohio	99.00
H. A. Collins, 76 S. Burnett St., E. Orange, N. J.	Sells Storage Heaters in New Jersey	1,056.44
Automatic Water Heater Sales Co., 217 N. Wells St., Chicago, Ill.	Sells Storage Heaters in Chicago, Ill.	194.02
F. H. Maloney, 1432 Pacheco St., San Francisco, Calif.	San Francisco, Calif.	163.34
Left Company— Blight Steinman Schaefer Disbrow & Schwab		1,258.91
		<u>\$16,286.83</u>

6. That the respondent during the period January 1, 1935 to October 31, 1935 made disbursements for advertising as follows:

Schonberg Printing Co.	Ohio	{ \$8,750.48
Mugler Engraving & Color Plate Co.	Ohio	

16
April 21, 1934.
Cleveland, Ohio.

Sands Mfg. Co.,
5407 Sweeney Ave.,
Cleveland, Ohio.

We, the undersigned employees of this Company, acting under the provisions contained in Section 7 (a) of the National Recovery Act have chosen Harry Potter, Clarence Dusek and Lada Jindra

as members of a committee to represent us in collective bargaining with the management.

It is hereby requested that the management meet with this committee, or other representatives that may be chosen from time to time, and that this committee be privileged to be accompanied by representatives of the M.E.S.A. when occasion requires it.

Henry J. Meyer
John Gapp
Paul Brandt
Joseph Swanson
Tony Avon
E. Stack
H. L. Garms
Frank Doherty
Mike Schubert
William Brandt
L. H. Doherty

Emil Tulow
Albert D. Mazzoni
Leo Hahn
Albert James Farrell
Martin H. Moritz
John Pansky
Frank Pansky
Clarence Ball
Stanley Linkin
John Greeley
John Mentel
Lada Jindra
N. F. Potter

IN THE PRESENCE OF
DATE /
SIGNED BY THE EMPLOYEES
WITNESSES
M. J. G. - 11
J. J. G. - 11
J. J. G. - 11
J. J. G. - 11
J. J. G. - 11
J. J. G. - 11
J. J. G. - 11
J. J. G. - 11
J. J. G. - 11
J. J. G. - 11

It is hereby requested that the management meet with this committee, or other representatives that may be chosen from time to time, and that this committee be privileged to be accompanied by representatives of the M.E.S.A. when occasion requires it.

Emil Tulow
Albert Mazzini
Leo Kahn
Albert James Farrell
Martin H. Moritz
John Pansky
Frank Pansky
Clarence Ball
Stanley Link
John Greeley
John Wentzel
Sada Jindra
N. F. Porter
J. M. Herman
J. Janousek
E. J. Dusek

IN THE MATTER OF:
DATE: 12/1/55 FISCAL REPORTING
BY: Ed. J. G. [Signature]

RESPONDENT'S EXHIBIT No. 4

Cleveland, Ohio,
May 2, 1934.

The Sands Mfg. Co.,
5407 Sweeney Ave.,
Cleveland, Ohio.

Gentlemen:

We, the undersigned, having been elected by the shop employees as their shop committee, are herewith submitting their proposals and demands for your consideration and action thereon within one week's time.

These proposals and demands are as follows:

1. All men employed in the factory shall receive a 10% increase in pay with the exception of the two watchmen, who are to receive 5%. Also time and a half shall be paid for all time over the N.R.A. code hours, and double time for Sundays and holidays. The watchmen and fireman excepted as to Sundays and holidays.

2. When an employee is discharged, he may have the right for a hearing before the shop committee and the company officers.

3. If shortage of work compels the factory to reduce its force, the working week shall be reduced to three days, and each department shall be governed by the work in that department.

4. No man, whether he be a member of the union or not, shall receive privileges that cannot be enjoyed by the other employees.

5. The lunch, milk, laundry and hand soap privileges shall be returned as has been in the past with these exceptions; that the dealers be allowed to leave the lunches, milk, laundry and hand soap at the shipping-room at their convenience, and the men be allowed to order or get these articles on their own time.

6. If in case of shortage of work, and men are laid off, seniority shall rule with the exception of the key men, and only by departments. When business picks up, old employees who have been laid off shall be re-employed, (if the employee so desires) before any new men can be hired. The employee involved shall notify both the shop committee and the management within three days whether or not he wishes to return.

Respondent's Exhibit No. 4

7. All men designated as foremen in the past, and have been on weekly salaries, shall receive an hourly rate based on their present salaries divided by 35 hours, given the corrected rate with a 10% increase added.

8. All men taken outside to work shall be notified the day previous, and they will report direct to that job without ringing in their card, and they will not ring out at night unless they have returned to the shop before quitting.

9. All new men shall be paid according to the N.R.A. code until they have proved that they are able to do the work satisfactorily.

10. All discussions shall be held with the elected shop committee. No other individuals or committee shall be recognized. All grievances shall be presented to the shop committee, who in turn will take up the matter with the shop management.

11. There shall not be another demand made for pay increase for sixty days, unless there is an appreciable rise in the cost of living.

H. F. POTTER,
LADA JINDRA,
C. J. DUSEK,
The Committee.

Cleveland, Ohio,
May 7, 1934

In addition to the above named paragraphs, the following is to be added:

12. Should any additional men be employed after May 7, 1934, these new employees will be discharged before paragraph number 3 shall become effective.

LADA JINDRA,
C. J. DUSEK,
H. F. POTTER,
The Committee.

The Sands Mfg. Co. agree to the above named terms and conditions.

THE SANDS MFG. CO.,

RESPONDENT'S EXHIBIT No. 5

Cleveland, Ohio.
June 15, 1935.

The Sands Mfg. Co.,
5407 Sweeney Ave.,
Cleveland, Ohio.

Gentlemen:

This agreement entered into between the Sands Mfg. Co. and the undersigned, who represent the employees and members of the M.E.S.A. This agreement to be in force from June 1, 1935 to March 1, 1936. Negotiations can be started 30 days before expiration of contract.

(1) That the undersigned, or others who may be designated by the employees, shall be recognized as the committee to meet with the management for collective bargaining and at no time shall an individual be recognized unless accompanied by two or more shop committeemen.

(2) That all men, who were on the pay roll as of May 20, 1935, be returned to work without any discrimination.

(3) That no employee will be discharged before he has had a hearing before the shop committee and the management. The complaining foreman or foremen shall be present at these hearings and present his case.

(4) That in case of a shortage of work, the employees shall be notified twenty-four (24) hours before the lay-off becomes effective.

(5) That when employees are laid off, seniority rights shall rule, and by departments.

(6) That when one department is shut down, men from this department will not be transferred or work in other departments until all old men only within that department, who were laid off, have been called back.

(7) That all new employees be laid off before any old employees, in order to guarantee if possible at least one weeks full time before the working week is reduced to three days.

(8) That the working week shall consist of five days, beginning Monday A. M. and ending Friday P. M. The working day shall be eight hours of Twenty-four and all over eight hours shall be paid for at the rate of

Respondent's Exhibit No. 5

time and one-half. Time and one-half shall prevail for all Saturday work unless a holiday comes within the week and then Saturday shall be worked at straight time. Double time shall be paid for all Sundays and Holidays.

(9) That all old employees receive 2 cents per hour increase in pay and all new employees prior to May 21, 1935 receive the 10% already granted.

(10) That before any new men are employed, the committee shall be notified to that effect. Men employed as of May 21, 1935 are considered already employees.

(11) That all new employees in the future shall have the right to join any labor organization any time they so desire.

(12) That when a new employee is taken on, the company will have the right to discharge him within fifteen days providing he is unable to do the work, through the approval of the foreman. After fifteen days the employee in question shall be granted a hearing before the shop committee and the management.

(13) That after ninety days work any new employee shall receive an automatic increase in pay bringing his hourly rate up to and equal with the other low bracket employees.

(14) Mill wright work that can be done without the aid of outside help shall be done by the old employees, providing that the new millwright is not at hand.

(15) That Harry Gassell and Milburn Moritz be discharged immediately and not to be re-hired at any time nor will they be employed to do any work for the Sands Realty Co.

(16) All Carbecks' relatives be discharged immediately.

(17) That the committee have the right to make inquiry into any complaint that may be made by any employee.

(18) That the old employees are to be all men in the employ of the company at the time the original agreement was signed and prior to the government order. That the new men, as stated above, be considered as the second section of employees and men who were

Respondent's Exhibit No. 8

employed at the time of the government order during the fall of 1934.

(19) That if an employee resigns, he automatically loses his seniority rights and if, at any time, he may be re-employed, he is to receive the same wages as he was being paid at the time he left the employ of the company.

(20) In case of a misunderstanding between the management and the employees, the committee shall allow the management forty-eight (48) hours to settle the dispute, and if then unsuccessful the committee shall act as they see fit.

TONY J. MORACO,
L. JINDRA
C. J. DUSEK,
F. PANSKY,
The Committee.

THE SANDS MFG. CO.,
GARRY SANDS, Treas.

RESPONDENT'S EXHIBIT No. 8

Cleveland, Ohio.
Sept. 10, 1935.

To whom it may concern.

It is agreed that the contract between the Cleveland Metal Trades Council, The Int'l Ass'n of Machinists and the Sands Mfg. Co. is by mutual consent dissolved.

Dated as of Tuesday, Sept. 10, 1935.

(Signed) THE SANDS MFG. Co.,
G. SANDS, Treas.,

(Signed) JAMES P. McWEENY,
President C.M.T.C.,

(Signed) CHAS. L. MILZ,
R. A. Dist No. 54 I. A. M.

RESPONDENT'S EXHIBIT No. 9

Enclosed 0740

City, District & State
Office**MECHANICS EDUCATIONAL SOCIETY OF
AMERICA**5713 EUCLID AVENUE
CLEVELAND, O.

This agreement entered into between the Sands Mfg. Co. and the undersigned, who represent the employees and members of the M.E.S.A. This agreement to be in force from June 1, 1935 to January 2, 1935.

(1) That the undersigned, or others who may be designated by the employees, shall be recognized as the committee to meet with the management for collective bargaining and at no time shall an individual be recognized unless accompanied by two or more shop committeemen.

(2) That all men, who were on the pay roll as of May 20th, 1935, be returned to work without any discrimination.

(3) That no employee will be discharged before he has had a hearing before the shop committee and the management. The complaining foreman or foremen shall be present at these hearings and present his case.

(4) That in case of a shortage of work, the employees shall be notified twenty-four (24) hours before the lay-off becomes effective.

(5) That when employees are laid off, seniority rights shall rule—and by departments.

(6) That when one department is shut down, men from this department will not be transferred or work in other departments until all men within that department, who were laid off, have been called back.

(7) That all new employees be laid off before any old employees, in order to guarantee at least four weeks full time work before the working week is reduced to three days.

(8) That the working week shall consist of five days, beginning Monday A. M. and ending Friday P. M. The working day shall be eight hours of twenty-four and

Respondent's Exhibit No. 9

all over eight hours shall be paid for at the rate of time and one-half. Time and one-half shall prevail for all Saturday work unless a holiday comes within the week and then Saturday shall be worked at straight time. Double time shall be paid for all Sundays and Holidays.

(9) That all old employees receive 5 cents per hour increase in pay and all new employees receive 5 cents per hour increase in pay, above the 10% already granted.

(10) That before any new men are employed, the committee shall be notified to that effect. Men employed as of May 21st are considered already employed.

(11) That all new employees in the future shall have the right to join any labor organization any time they so desire.

(12) That when a new employee is taken on, the company will have the right to discharge him within fifteen days providing he is unable to do the work. The shop committee shall be notified at all times.

(13) That after fifteen days trial, any new employee shall receive an automatic increase in pay bringing his hourly rate up to and equal with the other low bracket employees.

(14) That the present employees shall not be compelled to do millwright work and before any new men shall be employed for this work. Wm. Spraggins shall be re-employed immediately.

(15) That Harry Gassell and Milburn Moritz be discharged immediately and not to be re-hired at any time nor will they be employed to do any work for the Sands Realty Co.

(16) That George Carbeck Sr. and George Carbeck Jr. be discharged immediately as well as any of their relatives.

(17) That it shall not be the policy of the management to permit any abuses toward any employee.

(18) That the committee have the right to make inquiry into any complaint that may be made by any employee.

Respondent's Exhibit No. 9

That the old employees are to be all men in the company of the company at the time the original agreement was signed and prior to the government order. The new men, as stated above, be considered as a second section of employees and men who were employed at the time of the government order during all of 1934.

That if an employee resigns, he automatically loses his seniority rights and if, at any time, he may be re-employed, he is to receive the same wages as he was being paid at the time he left the employ of the company.

H. F. POTTER,
State Chairman.
TONY J. MORACO,
C. J. DUSEK,
FRANK PANSKY,
L. JINDRA,
The Committee.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 7767

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

THE SANDS MANUFACTURING COMPANY,
Respondent.

STIPULATION

(Filed August 9, 1937)

It is hereby stipulated and agreed by and between the attorneys in the above entitled case that respondent's answer and cross petition for review may be filed forthwith in this case and that no separate case need be docketed.

It is further agreed that the record, as printed, is the record applicable both to the petition and the answer and cross petition.

Dated at Washington, D. C., this 6th day of August, 1937.

ROBERT B. WATTS,
Associate General Counsel,
National Labor Relations Board.

Dated at Cleveland, Ohio, this 4th day of August, 1937.

STANLEY & SMOYER,
Attorneys for Respondent,
970 Union Trust Bldg.,
Cleveland, Ohio.

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SIXTH CIRCUIT

Cause Argued and Submitted Mar. 11, 1938

Before HICKS, SIMONS, and ALLEN, JJ.

This cause is argued by L. A. Knapp for Petitioner and by H. E. [unclear] for Respondent and is submitted to the Court.

Decree

Entered May 13, 1938

On petition for enforcement of an order of the National Labor Relations Board.

This cause came on to be heard on the transcript of record from the National Labor Relations Board, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed that the order is set aside and the petition to enforce is dismissed.

Opinion

Filed May 13, 1938

United States Circuit Court of Appeals, Sixth Circuit

No. 7767

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE SANDS MANUFACTURING COMPANY, RESPONDENT

Petition for Enforcement of an Order of the National Labor Relations Board

Decided May 13, 1938

Before HICKS, SIMONS, and ALLEN, Circuit Judges

ALLEN, Circuit Judge. This case arises out of a petition by the National Labor Relations Board to enforce its order, and a cross-petition by respondent, praying for review of such order. The Board issued a complaint against respondent at the instance of the Mechanics Educational Society of America, a labor organization hereinafter called the MESA), alleging that respondent had violated Section 2, subdivisions (6) and (7) and Section 8, subdivisions (1), (3), and (5) of the National Labor Relations Act (Title 29, U. S. C.).

A hearing was held before the trial examiner, who decided the respondent had locked out, discharged, and refused to employ forty-eight of its employees, and had interfered with, restrained, coerced its employees in the exercise of their rights to organize and bargain collectively, had discouraged membership in the MESA and had thus engaged in unfair labor practices within the meaning of the statute. Because of his opinion that much of the difficulty might have been avoided by the employees themselves, the examiner recommended their reinstatement without back pay. The Board approved the examiner's findings, and decided in addition that respondent had refused to bargain collectively with MESA as the exclusive representative of its employees, in violation of sub-section (5) of Section 158, Title 29, U. S. C., and ordered reinstatement of the employees with back pay from September 3, 1935, to the date of offer of reinstatement.

Respondent manufactures heaters, valves, and parts. The plant is small, the number of employees varying roughly from 30 to 80 according to the volume of orders. It is subdivided into departments, such as the machine shop, coil, tank heater, and assembly departments, in which the work performed varies in its nature. In the machine shop raw material and certain parts are machined and fabricated, and the stock is prepared which is assembled and processed in the other departments.

Early in 1934 practically all of the employees joined the MESA and designated three of their number as a committee to represent them for purposes of collective bargaining. No question is raised as to the committee's authority. Respondent immediately recognized and conferred with the shop committee whenever requested to do so. The parties operated under a mutual agreement for increase in wages from May 2, 1934, until May 1935. In the fall of 1934 the MESA agreed that respondent could hire additional workmen to fill a projected Government order, on condition that it discharge such additional men when the order had been completed. This promise was carried out by the management. Practically all of the men newly hired became members of the MESA, and respondent in no way opposed this membership. In May 1935, the shop committee asked for wage increase, and when this was denied, called a strike on May 2, 1935. Negotiations continued during the strike, and an oral agreement was entered into under which the strikers returned to work on June 3, 1935, but struck again on June 6th, because respondent had refused to reinstate seven of the strikers. Respondent claimed that these men were inefficient, and Potter, representative of the MESA, said that several of them might be incompetent.

Further negotiations were held, and the contract of June 15, 1935, resulted. It was drafted by the shop committee of the MESA, certain changes being made at the insistence of respondent. The contract provided for an increase of wages, for the discharge of certain employees objected to by the shop committee, and otherwise reg-

had the conditions of employment. The employees, including the ones whom respondent wished to discharge, then returned to work.

By the middle of July respondent had filled the orders accumulated during the strikes, and after conference, the men in its tank heater department, with the exception of the foreman, were laid off, and the plant was operated on a schedule of three days a week. Respondent failed to increase the force in the machine shop in order to prepare for and to employ for that purpose new men experienced in machine-shop work, instead of transferring old men from other departments, claiming that the contract of June 15th entitled it to this method of operation. At this time a number of the machine shop employees were members of the International Association of Machinists affiliated with the American Federation of Labor. The shop committee contended that under the contract no new men could be hired for the machine shop so long as old men in other departments of the plant were not employed.

Additional conferences were held on the subject, in which the views of the employer and the employees were diametrically opposed, both as to the meaning of the contract, and as to whether respondent should hire new men for the machine shop. The discussions were held at frequent intervals until August 19, 1935, when the shop committee was asked by the management to consult with the men and report whether they desire that the working force in the machine shop should be increased by new men while other departments were temporarily shut down, or that the whole plant should be temporarily shut down. The committee stated that it preferred that the plant be shut down. Respondent closed its factory on August 21st. Shortly thereafter it negotiated an agreement with the International Association of Machinists, and sought experienced machinists through the Cuyahoga County relief organization. On September 3d the respondent opened its machine shop, invited a number of its former machine shop employees, all members of the International Association of Machinists to return to work, but filled other places in the machine shop with new men instead of calling old men from other departments of the plant. Forty-eight men, all members of the IMA were not recalled. Respondent offered individual contracts to some of the old MESA men whom it wished to employ as foremen. To some of them the offer was made upon the condition that they join the International Association of Machinists.

Upon these facts the Board found that the respondent had refused to bargain collectively with the representative of its old employees; that the old employees were locked out, discharged, and refused employment because they were members of the MESA; that by failing to recall its employees who were members of the MESA and by requiring that certain of them join the International Association of Machinists as a condition of employment, respondent discriminated against its employees in regard to tenure of employment and thereby discouraged membership in the MESA, and that by all

of these acts respondent interfered with, restrained, and coerced employees in the exercise of the rights guaranteed under the statute.

The findings of the Board as to the facts, if supported by evidence, are conclusive. The court may not, by substituting its own conclusions, reverse the Board's findings unless the evidence affords a reasonable basis for them. *Agwilines, Inc. v. National Labor Relations Board*, 87 Fed. (2d) 146, 151 (C. C. A. 5). The contention is that the Board refused to make certain findings supported by evidence, and that its conclusions either are based on no evidence or are contrary to the Board's own findings of fact. The facts for the most part are not in dispute, and the principal question is whether the Board's findings, taken together with the admitted facts, call for a different conclusion.

Refusal to Bargain Collectively

The Board found that respondent had refused to bargain collectively with the representatives of its old employees.¹ This finding is based on the fact that Potter, state chairman of the MESA, a former employee of respondent, on September 4th, over the phone, asked for a meeting with respondent, which the management refused. The shop committee (the MESA committee of the plant) never communicated with respondent after this time, but picketed the plant immediately. The finding is also based upon respondent's negotiations with the other union affiliated with the American Federation of Labor and the replacement of members of the MESA with new men and offer of individual contracts to four of the old employees after the lay-off of August 21st. The last element in the finding may be briefly dealt with. The National Labor Relations Act does not prevent the employer from hiring individuals on whatever terms he may by unilateral action determine (*National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45). The offer of individual contracts to the four old employees was illegal.

The legal effect of the refusal to meet with Potter, of the replacement of the old men with new men, and of the negotiations with a different union, depends upon whether the MESA and the employees had violated their contract prior to August 21st, thereby entitling respondent to abrogate the contract so that the old men were no longer its employees. The Board stated that although it believed that an honest difference of opinion existed on the construction of the contract, it did not alter the case if the shop committee was considered to have violated the agreement. We disagree with this. While the statute creates new and important rights for labor, it does not abrogate the correlative rights of the employer. As stated

¹ The terms "old men" and "new men" are used in this opinion in the same sense as defined in the contract of June 15, 1935, which is as follows: "That the old employees to be all men in the employ of the company at the time the original agreement was made and prior to the government order. That the new men, as stated above, be considered the second section of employees and men who were employed at the time of the government order during the fall of 1934."

National Labor Relations Board v. Jones & Laughlin Steel Corp.,
supra, at page 45:

"The Act does not compel agreements between employers and employees. It does not compel any agreement whatever. It does not prevent the employer 'from refusing to make a collective contract and hiring individuals on whatever terms' the employer 'may by unilateral action determine.' The Act expressly provides in § 9 (a) that any individual employee or a group of employees shall have the right at any time to present grievances to their employer. The theory of the Act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the Act in itself does not attempt to compel. As we said in *Texas & N. O. R. Co. v. Railway Clerks*, supra, and repeated in *Virginian Railway Co. v. System Federation*, No. 40, supra, the cases of *Adair v. United States*, 208 U. S. 161, and *Coppage v. Kansas*, 236 U. S. 1, are inapplicable to legislation of this character. The Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion. The very purpose is the subject of investigation with full opportunity to view the facts. It would seem that when employers freely recognize the right of their employees to their own organizations and their unrestricted right of representation there will be much less occasion for controversy in respect to the free and appropriate exercise of the right of selection and discharge."

The Contract

Paragraphs (5), (6), and (7) of the contract, which are the portions in controversy, read as follows:

"(5) That when employees are laid off seniority rights shall rule, and by departments.

"(6) That when one department is shut down men from this department will not be transferred or work in other departments until all old men only within that department who were laid off have been called back.

"(7) That all new employees be laid off before any old employees, in order to guarantee, if possible, at least one week's full time before the working week is reduced to three days."

It had been respondent's practice when work was slack to transfer men from their regular departments to other departments. Respondent considered this practice inefficient, and, therefore, when the contract was being negotiated it insisted that the words "and by departments," at the end of paragraph (5), be inserted. The express pur-

pose was that respondent might discontinue the practice of calling old men back except to their own departments; and members of the shop committee testified in effect that it was intended to enable respondent to "run by departments." The Board considered that paragraph (5) is at variance with paragraph (7), which deals with the same subject but it not limited to departments. It, therefore, decided that the shop committee was not unreasonable in contending that the preference to old men over new men applied to the whole plant, and not to departments only. We do not so construe paragraph (7). While it relates in a limited way to seniority rights, it has no bearing upon the question as to whether those rights in general shall govern through the plant as a whole or by departments. Respondent's contention is also strengthened by the addition of the word "only," which was inserted at its instance in paragraph (6). We see no ambiguity in the contract and agree with respondent's construction of it. To give it any other meaning is to nullify paragraph (5). The men objected to carrying out this provision, and the matter was discussed repeatedly from the time of the execution of the agreement. Respondent is not charged with breaking the contract, and, in fact, this record shows that it complied on its part with all terms of the agreement, but the shop committee refused to permit respondent to increase the force in the machine shop in accordance with the contract, even though the only alternative was the closing of the plant.

The Board gave weight to the fact that respondent, after the words "and by departments" were inserted in paragraph 5, and after the contract was executed, occasionally transferred certain old men from their regular departments to others. It is plain, however, that this was done because of the insistence of the men and because of the constant fear of strikes. Shortly after the execution of the contract respondent posted in its plant a classification of its employees by departments, and thus gave notice of its intention and desire to proceed under the contract.

Respondent was not bound for an indefinite time to negotiate with an organization which had broken its contract, nor to negotiate in order to secure its performance. The statute does not compel the employer to renounce reliance upon its rights under a valid agreement. It merely requires the employer to negotiate sincerely [*Jaffery-DeWitt Insulator Co. v. National Labor Relations Board*, 309 U. S. 134, 139 (C. C. A. 4)]. The sincerity of the employer's effort is to be tested by the length of time involved in the negotiations, their frequency, and the persistence with which the employer offers opportunity for agreement. The evidence is overwhelming here to the effect that such negotiations had actually taken place. Potter says that respondent's manager sent word when the MES entered the plant that the men had the privilege of belonging to any union they wished, and that there was no objection on his part to any organization. He states in effect that the shop committee never had any trouble getting meetings, and that the manager

not object to his presence as a union representative in the consultations during the strike in 1935. Repeated conferences were held from May to August 21, 1935, in an endeavor to arrive at an agreement on the meaning of the contract. Although the Board finds this as a fact, and that an "honest difference of opinion" as to the contract existed, and that the parties were "diametrically opposed," on the matter of the application of seniority preference by departments as opposed to its application throughout the plant as a whole, the Board ignores the conclusion from these facts and gives over-emphasis to the events which occurred after August 21, 1935. *There was no refusal by respondent to bargain collectively until after two months of continuous effort on its part to secure performance of the contract.* In view of the background, the uncontroverted facts as to the complete lack of any attempt to prevent organization or to discourage affiliation with the MESA, the want of espionage or coercion practiced on the part of the management, and the express findings of the Board as to repeated conferences, honest difference of opinion, and diametrical opposition of views, we think that only one conclusion can be drawn, namely, that the respondent sincerely attempted over a long period to negotiate with the MESA. When the men would not perform their contract an impasse arose. Respondent was not obligated to prolong the impasse, and its refusal to bargain further did not constitute a violation of the statute.

Discrimination in tenure

The Board found that the respondent discriminated in regard to tenure of employment, and thereby discouraged membership in the MESA, in violation of Title 29, Section 158 (3), in that it failed to recall its employees who were members of the MESA, and required that certain of them join the International Association of Machinists as a condition of employment.

The statute does not interfere with the normal right of the employer to select or discharge his employees. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, supra, at 45. If employees violate their contract, they may be discharged for that reason, and this does not constitute a discrimination in regard to tenure of employment nor an unfair labor practice, nor does it constitute discharge because the employees are members of a union. In this case no evidence appears that the employees were discharged because of their membership in the MESA or any union. The respondent was not compelled to put before the men, singly or collectively, any new propositions after the shop committee had chosen the lay-off, which in effect was equivalent to a strike. Section 152 (3), Title 29, U.S.C., provides that "The term 'employee' shall include any employee . . . whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice . . ." The controversy here was a current labor dispute within the definition of Title 29, Section 152 (9). But the statute does not provide that the relationship held in statu quo under

Title 29, Section 152 (3), shall continue in absence of wrongful conduct on the part of the employer and of rightful conduct on the part of the employees. If such were its meaning, the right of the employer to select and discharge his employees (*National Labor Relations Board v. Jones & Laughlin Steel Corp.*, supra), which still exists in absence of intimidation or coercion in violation of the statute, would be cut off. As the respondent was within its rights in not recalling the old men, their relationship was terminated by the discharge, and no discrimination in tenure existed.

Negotiation With Another Union

So long as the employee relationships continued, and there was any possibility that the old men and the MESA would perform the contract, which on August 21st had six months to run, there is no substantial evidence of conflict between the management and the organization. When the machine shop was reopened on September 3, 1935, the members of the MESA were not in the majority, and that organization was no longer representative of the employees. Respondent turned to another organization as a source of labor supply. The fact that respondent did not call back any of the MESA members was therefore not a discrimination in tenure. The discharge was rightful, and the order of reinstatement must be set aside.

In view of the fact that the conclusions of the Board were contradicted by and at variance with so many of its evidential findings, we deem it necessary to reemphasize the obligation which rests upon the Board as a quasi-judicial tribunal. The very fact that in the initial stages of the proceeding the Board files the complaint, hears the complaint through its examiner, and then makes a decision based thereon, requires it with scrupulous impartiality to evaluate the evidence presented on behalf not only of the employees, but also on behalf of the employer. Cf. *Morgan v. United States*, — U. S. — (decided April 25, 1938).

Coercion of Employees

The respondent suggested during September to two of its old employees that they join the American Federation of Labor as a condition of employment. Since the contract had already been abrogated and the men had been discharged, and since the MESA was no longer the exclusive representative of the employees, these acts have no relation to the controversy here.

The order is set aside, and the petition to enforce is dismissed.

United States Circuit Court of Appeals for the Sixth Circuit

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the case of *National Labor Relations Board vs. The Sands Manufacturing Company No. 7767*, as the same remains upon the files and record

of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 5th day of August, A. D. 1938.

[SEAL]

J. W. MENZIES,

*Clerk of the United States Circuit Court
of Appeals for the Sixth Circuit.*

In Supreme Court of the United States

[Title omitted.]

Stipulation concerning addition to printed record

Filed Nov. 1, 1938

It is hereby stipulated and agreed that the "Petition for Enforcement of an Order of the National Labor Relations Board" and "Respondent's Answer to the Petition and Its Cross-Petition for Review", both of which were filed in this proceeding in the court below and true copies of which are annexed hereto certified by the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, be added to the printed record in the United States Supreme Court.

CHARLES FAHY,

General Counsel, National Labor Relations Board.

Dated at Washington, D. C., October 28, 1938.

HARRY E. SMoyer,

WILLIS K. STANLEY,
Attorneys for Respondent.

Dated at Cleveland, Ohio, October 29, 1938.

In United States Circuit Court of Appeals for the Sixth Circuit

October Term, 1936

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE SANDS MANUFACTURING COMPANY, A CORPORATION, RESPONDENT

*Petition for the enforcement of an order of the National Labor
Relations Board*

*To the Honorable, the Judges of the United States Circuit Court of
Appeals for the Sixth Circuit:*

The National Labor Relations Board (hereinafter referred to as the Board), pursuant to the authority conferred upon it by the provisions of an Act of Congress, approved July 5, 1935, 49 Stat. 449, Chap. 372, 29 U. S. C. A., section 151, known as the National Labor Relations Act, respectfully petitions this Honorable Court for the

enforcement of a certain order issued by said Board in a proceeding instituted by it against respondent, The Sands Manufacturing Company. Said proceeding is known upon the records of the Board as Case No. C-33, the title thereof being "In the Matter of The Sands Manufacturing Company and Mechanics Educational Society of America."

In support of this petition, the Board respectfully shows:

(1) Respondent is and at all times hereinafter mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Ohio and has and maintains its principal office and place of business and transacts said business in the City of Cleveland, Ohio.

(2) By reason of the matters alleged in paragraph (1) hereof, this Court has jurisdiction of the petition by virtue of section 10 (e) of said National Labor Relations Act.

(3) On November 12, 1935, a charge having been theretofore duly filed on October 14, 1935, with the Regional Director of the National Labor Relations Board for the Eighth Region by the Mechanics Educational Society of America, the Board issued its complaint in said proceeding No. C-33, charging that respondent had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, which complaint, with a notice of hearing thereon for November 22, 1935, was duly served upon the respondent. Thereafter, on November 14, 1935, respondent filed a motion for continuance of said hearing, which motion was denied by the Regional Director on November 15, 1935. Thereafter, by orders dated November 16, 1935, pursuant to motions filed by respondent, the time within which to file its answer was extended to November 20, 1935, and the hearing continued from November 22 to November 25, 1935. Respondent filed its answer to the complaint, dated November 20, 1935. Saul Danaceau was duly designated as Trial Examiner to conduct the hearing in said matter.

(4) Thereafter, hearings were held in Cleveland, Ohio, by the Trial Examiner upon the allegations of the complaint, commencing November 25 and concluding November 30, 1935. Testimony and other evidence with respect to the allegations of said complaint were adduced. The respondent appeared at the hearing, by counsel, participated therein and offered evidence. Respondent's objection to the jurisdiction of the Board, raised in its answer, and its motion to dismiss the complaint, at the conclusion of the Board's case, were denied by the Trial Examiner.

(5) Said Trial Examiner duly filed with said Regional Director an Intermediate Report, dated December 26, 1935, to which, on January 4, 1936, and January 14, 1936, exceptions were filed by the Mechanics Educational Society of America and respondent, respectively. Respondent, on January 14, 1936, requested leave to submit a brief and for oral argument. Said applications were granted by the Board.

and the aforesaid brief was filed and oral argument heard on January 24, 1936, before the Board.

(6) Thereafter, on April 17, 1936, the Board, having first considered the matter and being sufficiently advised in the premises and being of the opinion upon all the testimony and evidence that the respondent had been and then was engaged in certain unfair labor practices affecting commerce within the meaning of said National Labor Relations Act, duly stated its findings of fact and issued and entered the following order directed to the respondent:

"ORDER

On the basis of the findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Sands Manufacturing Company, and its officers, shall:

1. Cease and desist:

- (a) from interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection;
- (b) from discouraging membership in the Mechanics Educational Society of America by discrimination in regard to tenure of employment of any term or condition of employment; and
- (c) from refusing to bargain collectively with the Mechanics Educational Society of America as the exclusive representative of all its production and maintenance employees, other than those engaged in a supervisory or clerical capacity, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

2. Take the following action, which the Board finds will effectuate the policies of the Act:

- (a) offer to all of the employees listed in part IV of the findings of fact immediate and full reinstatement, respectively, to their former positions with all the rights and privileges previously enjoyed;
- (b) make whole said employees for any losses of pay they have suffered by reason of their discharge by payment, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from September 3, 1935, to the date of offer of reinstatement, computed at the wage rate each was paid prior to discharge, less the amount which each may have earned during such period; and in the event of any dispute as to the amount due, the dispute shall be laid before this Board, for determination within the terms set forth in this Order; and
- (c) upon request, bargain collectively with the Mechanics Educational Society of America as the exclusive representative of all its

production and maintenance employees, other than those engaged in a supervisory or clerical capacity, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment."

(7) Said order is, and at all times since its issuance has been, in full force and effect.

(8) Thereafter, on April 17, 1936, said order was served upon the said respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to respondent's attorneys in Cleveland, Ohio.

(9) Respondent has failed to comply with said order of the Board heretofore set forth in paragraph (6) hereof and has failed to indicate any intention to comply therewith and the Board accordingly alleges that the respondent will not comply therewith unless and until required so to do by this Court.

Wherefore, the Board petitions this Honorable Court for the enforcement of its order of April 17, 1936, and, pursuant to section 10 (e) of said National Labor Relations Act, is certifying and filing with this Court a transcript of the entire record in the proceedings before the Board, including the pleadings, testimony, and evidence findings of fact, and said order of the Board.

The Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings testimony and evidence, and the proceedings set forth in such transcript and upon the order made thereupon a decree enforcing in whole said order of the Board and requiring respondent, its officers, agents and representatives to comply therewith.

Dated at Washington, D. C., this 22nd day of June 1937.

J. WARREN MADDEN,

J. Warren Madden, *Chairman,*

National Labor Relations Board.

EDWIN S. SMITH,

Edwin S. Smith, *Member,*

National Labor Relations Board.

DONALD WAKEFIELD SMITH,

Donald Wakefield Smith, *Member.*

National Labor Relations Board.

ROBERT B. WATTS,

Robert B. Watts,

Associate General Counsel,

National Labor Relations Board, Washington.

[Duly sworn to by J. Warren Madden et al.; jurat omitted in printing.]

[Clerk's certificate to foregoing paper omitted in printing.]

In United States Circuit Court of Appeals for the Sixth Circuit

[Title omitted.]

Respondent's answer to the petition and its cross-petition for review

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

Now comes the respondent and for its answer to the petition of the National Labor Relations Board filed herein and for its cross-petition for review of the petitioner's order respectively shows:

1. That the respondent admits all and singular the allegations of the petition in paragraphs numbered 1 to 4 thereof, both inclusive.

2. Respondent admits paragraph 5 of the petition but alleges that the Board arbitrarily denied to respondent and its counsel the right to be present at and to hear and reply to an argument made before the Board by the Board's counsel, the Board announcing at the conclusion of respondent's argument that the Board would hear its counsel in chambers in the absence of respondent and its counsel, to which respondent duly excepted.

3. Respecting paragraph 6 of the petition: Respondent admits that the Board considered the matter, denies that it was sufficiently advised in the premises, alleges its order is arbitrary, unreasonable, and not in accordance with law, but admits that it issued and entered the order therein set forth.

4. Respondent admits paragraphs 7, 8, and 9 of the petition.

5. That the order of the Board ought not to be enforced and the Board's petition ought to be denied because of the following facts, which are conclusively established in the record by convincing and substantial evidence. The respondent operates a factory for the manufacture of water heaters, employing from about twenty-four men in slack seasons to eighty in busy seasons. In April, 1934, when respondent's employees first manifested an interest in organizing themselves for the purpose of collective bargaining, the respondent encouraged them in their efforts, blew the whistle, and stopped operations one morning at 9:00 o'clock so as to permit them to perfect their organization in the Mechanics Educational Society of America (since affiliated with the Committee for Industrial Organization, as the respondent is informed). At all times thereafter the respondent afforded to all of its employees all of their rights under Section 7 of the National Labor Relations Act. The respondent repeatedly bargained with the shop committee of that organization. It entered into a written contract with them in May, 1934 under which they rendered their services until May, 1935. They then struck. The strike was settled by another written contract between respondent and its employees through a shop committee of M. E. S. A. members. That contract is dated June 15, 1935 and was effective until

March 1, 1936. Respondent adjusted the grievances of its employees in frequent meetings with their shop committee.

Respondent's employees were by themselves classified into two groups, namely, the original thirty-one (31) employees with whom the respondent made its contract of May, 1934, called in the June 15, 1935 contract "old men," and all employees hired after May, 1934, called in said contract "new men." During the negotiations leading up to the June, 1935 contract the respondent insisted upon the discontinuance of and said contract specifically permitted the respondent to discontinue a practice inefficient and costly in the opinion of the respondent and which had grown up through the depression. This practice was the transferring of men from a slack department to a busier department and paying them their regular wage, regardless of the fact that they lacked skill in the particular department to which they were transferred. The 1935 contract specifically covered that situation as quoted below.

More and more during the summer of 1935 the Shop Committee insisted that the Committee should decide such managerial questions as the amount of finished stock which should be manufactured and particularly which departments in its plant should be operated. On the instance of the M. E. S. A. union six of respondent's nine foremen became members. M. E. S. A. employees ostracized employees who were not members and refused to obey orders of foremen because the latter were not members of M. E. S. A.

Because respondent suffered losses of \$40,000.00 in 1934 and equal losses in 1935 it became imperative that respondent exercise control in managing its affairs. July and August of each year is a slack period in respondent's industry. In those months of 1935 it was necessary to make a reduction in its working force to about twenty-four (24) as was customary in slack seasons. The contract contained the following provisions:

"(5) That when employees are laid off, seniority rights shall rule, and by departments.

"(6) That when one department is shut down, men from this department will not be transferred or work in other departments until all old men only within that department, who were laid off, have been called back."

It reduced its force until it had only the "old" men in its employ, finally going on three days work per week before laying off any "old" men.

Respondent's machine shop is its prime department, a bottle neck for production, and must be at least thirty (30) days ahead of the other departments in normal production. In July and August 1935 it attempted to maintain a working force in its machine shop in addition to the four "old" men there employed by calling back so-called "new" men but who had been regularly employed in the machine shop and were skilled mechanics. The "old" men of other crafts or not of any craft and regularly employed in other departments, but

which departments were slack and about to be shut down, contended through the shop committee that they should be transferred to the machine shop regardless of the agreement. Respondent did not at any time lay off any "old" men working in the machine shop. Prior to July 27, 1935, it had four "old" and ten "new" men in the machine shop. The respondent laid off the ten "new" mechanics, although protesting that the demand of the shop committee was in violation of the contract. For about five weeks during July and August the respondent held meetings with the shop committee in which respondent insisted that it be permitted to retain or call back the "new" men for reemployment in its machine shop, to which the shop committee refused to accede. Under said contract in the event of a misunderstanding between respondent and its employees not settled within forty-eight (48) hours, the committee was free to act as it saw fit and might strike. Finally on August 19th, 1935, respondent informed the committee that it could not continue to operate on the three day per week schedule which had prevailed all through August for the reason that nothing was being accomplished. It insisted upon its right to build up the machine shop with the "new" men theretofore regularly employed in the machine shop without transferring "old" men not regularly employed in the machine shop into that department. It asked the shop committee to consult with their constituents about the difficulty. On August 21st, 1935, the shop committee informed respondent that the employees would not permit respondent to build up the machine shop with the "new" men as respondent insisted it had the right to do and that if the alternative to that was closing its plant, respondent should close its plant.

The respondent considered the actions of its employees a wilful breach of their contract and closed its plant on August 21, 1935. Neither their shop committee nor the complaining employees ever changed their position, even during the trial of this cause. Many of the so-called "new" men prior to their lay-off had become members of the International Association of Machinists affiliated with the American Federation of Labor. Respondent then for the first time entered into negotiations with the representative of that union, requested his cooperation in procuring men with which to operate its plant, made an open shop contract with said union, resumed operations, first in the machine shop, and then in other departments. The Mechanics Educational Society attempted to prevent respondent from operating its plant by picketing respondent's plant for about one month but were totally unsuccessful. The M. E. S. A. ordered and prevented all of its members from reentering respondent's employ by adopting a policy of suspending from its membership those of its members who reentered respondent's employ. On October 14, 1935, after all picketing had ceased in the vicinity of respondent's plant, the Mechanics Educational Society invoked the jurisdiction of the National Labor Relations Board and commenced the proceedings which resulted in the order set forth in its petition.

Respondent believes itself aggrieved by the provisions of order.

6. That the order of the Board is arbitrary, unreasonable, contrary to law. It rewards complainants for wilfully breaching their collective contract with the respondent. It penalizes respondent for having insisted that the complaining employees comply with material provisions of their contract. All acts of respondent which complaint is made occurred after respondent had throughout five weeks of negotiation to induce the complainants to comply with their contract and after they had wilfully adamantly refused to permit respondent to operate its plant in accordance with material provisions of said contract. Having been led to believe their refusal was final, and considering it to be a breach of their contract, respondent terminated said contract by securing other employees in the positions of those who refused to work in accordance with their contract. Every act of respondent of which complaint is made occurred after the termination of said contract and after the making of a new contract with an A. F. of L. Union under which new contract members of that union were to receive their services as employees (not, however, to the exclusion of other members), and after complainants had ceased to be employees of respondent because of their own acts.

7. That the order of the Board is arbitrary, unreasonable, contrary to law in that although it is plainly apparent from the Finding of Facts:

(a) That the sole controversy between respondent and complainants at the time respondent's plant was shut down was the application to respondent's operations of a number of material provisions of the contract between them;

(b) That respondent has at all times insisted that complainants' acts were a material breach of said contract and that its acts were lawfully done pursuant to a breach of said contract;

(c) That five weeks of negotiations failed to induce complainants to accede to what respondent contended were its rights under said contract;

(d) That complainants neither before nor after the hearing ever evinced any departure from the arbitrary position which they took prior to the shut down of respondent's plant and the positions of respondent and complainants were irreconcilable. nevertheless, the Board does not adjudicate the rights of the complainants or the respondent growing out of said contract, but grants complainants' reinstatement just as if no contract existed between the parties, in entire disregard of the provisions of said contract of respondent's rights as a result of complainants' breach. The dispute not having been adjudicated, reinstatement of the complainants would accomplish only a continuation of the dispute and constitute denial to the respondent of its rights under its contract.

That the said order is erroneous and ought to be reviewed, reversed, and set aside because from the Board's Finding of Facts it is clear:

(a) That there was no violation by respondent of the Act of Congress, approved July 5, 1935, 49 Stat. 449, Chap. 372, 29 U. S. C. A., sections 151 et seq., known as The National Labor Relations Act.

(b) That if any unfair labor practice were committed by the respondent, there is no substantial evidence to support the finding of the Board that it affected commerce or that it was in commerce, or that it burdened or obstructed commerce or the free flow of commerce, or that it led to or tended to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(c) That the respondent at all times afforded to all of its employees all of their rights under Section 7 of The National Labor Relations Act, that it recognized their union immediately upon their request of it to do so, that it bargained collectively with them whenever requested to do so, that it met with their chosen representatives and with them adjusted the grievances of its employees whenever requested to do so, that it entered into contracts with them through their chosen representatives, that it fully performed all of the provisions of said contracts by it to be performed, and that the acts of the respondent in filling the places of complaining employees were committed by it because it honestly believed said employees had refused to work for it in willful violation of material obligations of their contract with it.

(d) That prior to filling the places of the complaining employees, respondent had bargained repeatedly with their representatives concerning the subject matter of the dispute, that they were adamant in their refusal to permit respondent to operate its plant in accordance with respondent's interpretation of its contract with them, and that further bargaining either before the closing of the plant or just prior to its reopening its plant with new employees would have been a vain thing unless respondent surrendered what it considered to be its substantial rights under its contract.

(e) That in reopening its plant or after reopening its plant, respondent did not refuse to employ either members of the Mechanics Educational Society in general, or any of its former employees who were members of the Mechanics Educational Society who were willing to work for respondent according to respondent's understanding and interpretation of its contract with them.

(f) That the acts of the complaining employees which resulted in their places being filled by other employees were committed by them in an attempt to force respondent to depart from plain and material terms of its contract with them, that they refused to work for respondent according to these terms, that they never receded from their adamant refusal of August 21st to permit the respondent to operate its plant according to the plain terms of its contract with them, that when respondent reopened its plant they did not change

their position but elected to use force to coerce respondent into submission and picketed respondent's plant for a month, during which time they employed none of the legal remedies which were at their disposal if respondent were violating the contract, and that it was only after the use of force by them for over a month had failed to coerce the respondent into submission and respondent again peacefully and fully operating its plant, that they placed the matter before The National Labor Relations Board.

(g) There was no finding of any attempt on the part of respondent to deny to the employees any of their rights under Section 7 of the National Labor Relations Act prior to the time it shut down the plant. In spite of these circumstances the Board found Respondent had violated said Section 7 because in its opinion respondent was not justified in not seeking to reopen negotiations with the shop committee after said committee's repeated and definite refusal to permit the shop to be operated in accordance with the contract. The Board erred in considering the justification or lack of justification of respondent in so doing as a competent and deciding factor in this case.

(h) That the Board erred in considering as a competent deciding factor in the case that the record did not show to the satisfaction of the Board why the respondent had insisted that Sections 5 and 6 be included in the agreement of June 15, 1935, and why it insisted that having been included, these clauses be enforced.

(i) That the Board erred in considering as a competent deciding factor in the case as to the question of transfer to the machine shop the relative efficiency of the "old" men, not regularly employed in the machine shop, with the efficiency of the "new" men who had been employed in the machine shop and whom respondent desired to employ, when respondent's contract specifically provided for departmental seniority.

(j) That the Board erred in holding as a matter of law that, in the places of the complaining employees were filled by respondent because of their wilful breach of their contract with respondent, said filling would be immaterial and that they were nevertheless employees of respondent, that regardless of the fact that five weeks of meetings during which respondent attempted to persuade them to permit it to operate in accordance with their agreement had resulted only in their definite and final refusal to do so, respondent must again bargain with them before it filled their places.

(k) That the conclusion of the Board that the respondent made a forthright, candid effort to reach a settlement of the dispute with the complaining employees and that its efforts were not real but apparent, is contrary to the facts found by the Board in reference to its bargaining.

(l) That the Board erred in holding that respondent violated the law in respect of collective bargaining when it did not tell the complaining employees that the closing of the shop meant that the employees having broken their contract, they would not be reemployed.

when it also finds as a fact that: "It is inconceivable that the committee would have accepted this, especially since the men had been so successful when they struck a few months earlier."

(n) That the Board erred in imputing bad faith to the responding in respect of its negotiations with the complaining employees prior to August 21st because after having terminated the contract it attempted to make wage arrangements on a different and annual basis with the four "old" men, three of them foremen and one intended to be a foreman, whom it offered to re-employ.

(n) That the Board erred in considering as a competent deciding factor in the case that the respondent offered to the absolutely new men with whom it reopened its plant, but few of whom had ever been employed by respondent before that time, a lesser hourly wage than had theretofore been paid to its old and trained employees.

(o) That the Board erred in holding that after respondent terminated its contract with the complaining employees it was a violation of law for it to negotiate individually with the four "old" men respecting their re-employment.

(p) That in the opinion of the Board the contract between respondent and its employees was a one-sided affair, absolutely and very definitely binding upon the respondent, but imposing no obligations upon the employees in respect of its performance, a mere scrap of paper alterable at their will and capable of being violated by them with impunity.

(q) That, except . . . surrender its rights under its contract, respondent had no alternative course of action to that which it took on August 21st, 1935, and thereafter, if it would operate its plant as it desired to do, that the complaining employees forced it to take that action, and that the Board has employed inference upon inference arising out of events transpiring after August 21st for the purpose of concluding that what it expressly states in its finding of facts was at that time an honest difference of opinion over the interpretation of a contract later became an integral part of an open, deliberate, and intentional plan to violate the law because its employees were members of the Mechanics' Educational Society of America and had engaged in concerted activities for the purposes of collective bargaining.

(r) That on August 21st at the time respondent closed its plant less than thirty-one (31) employees were working, that when respondent reopened its plant it operated only the machine shop in which many could not have worked, still the Board's order includes forty-seven (47) former employees and orders back pay for all of them from September 3, 1935, even including the month that they picketed respondent's plant because of an alleged difference of opinion in respect of the interpretation of their contract with it.

(s) That the complaining employees did not offer to return to work after respondent reopened its plant, and thereby forced respondent, if it would operate its plant, to secure and train new

employees, and that the complaining employees have manifested continuously a determination to return to work only on their own terms which the Board finds the respondent honestly believed were different than the terms of their contract.

9. That said order is erroneous and ought to be reviewed, reversed and set aside because:

A. The Board found that "an honest difference of opinion existed on the construction of the June 15th agreement" whereas in truth the facts were, as appears from the record in the testimony of the complaining employees themselves, and the Board refused to find

"(a) That for about five weeks prior to August 21, 1935, a dispute existed between respondent and the employees' committee involving Article 5 of the agreement of June 15, 1935;

(b) That Article 5 of the agreement of June 15, 1935, was thoroughly discussed between respondent and the employees' committee before said agreement was entered into, and the employees' committee thoroughly understood the meaning of said Article 5;

(c) That for about five weeks prior to August 21, 1935, in numerous meetings between the respondent and the employees' committee the latter refused to permit the respondent to give effect to the words 'and by departments' in Article 5 of the agreement of June 15, 1935, and insisted that the rule of departmental seniority thereby established for respondent's plant be waived or abandoned by the respondent."

as more fully appears in respondent's First and Second Exceptions to the Intermediate Report.

B. The Board refused to find the following facts, which were established by substantial and convincing evidence which was not denied:

"That shortly after June 17, 1935, respondent prepared a classification of its employees by departments and posted same on the bulletin board in its plant, whereon was listed the names of the employees and the names of the respective departments in which they were classified, and that said classification remained posted until August 21, 1935, and thereafter."

as more fully appears in respondent's Seventh Exception to the Intermediate Report.

C. The Board found that respondent's machine shop was its "prime" department. I failed to find the following facts although established by substantial and convincing evidence which was undenied:

"That in order to operate its plant efficiently it is necessary that the respondent's machine shop be thirty (30) days ahead of the remainder of its plant. It is the prime department in the respondent's plant and also the bottle neck."

as more fully appears from respondent's Twentieth Exception to the Intermediate Report.

D. The Board found in reference to the dispute between respondent and its employees that "The shop committee contended that the

was sufficient stock in the machine shop, and that in any event, under the agreement of June 15, 1935, the respondent could not hire any new men for the machine shop as long as the old men were still laid off," whereas in truth the fact was and the Board refused to find that the position of the committee was not predicated upon their contract with respondent but in disregard of said contract and was as follows:

"There are some men, members of the old twenty-nine, who are either out of work or about to go out of work because of slackness in other departments in which they worked, and we want them moved over into the machine shop in preference to calling back those men who formerly worked in the machine shop but were newer men" more fully appears from respondent's Eleventh Exception to the Intermediate Report.

F. The Board found, in reference to the dispute between respondent and its employees, that Articles 5, 6, and 7 were the pertinent articles of the agreement of June 15, 1935, whereas it appears from said agreement that Article 20 is equally pertinent, namely:

"(30) In case of a misunderstanding between the management and the employees, the committee shall allow the management forty-eight (48) hours to settle the dispute, and if then unsuccessful the committee shall act as they see fit."

F. The Board found, in reference to transferring men from department to department, that "This practice prevailed even after June 15, 1935," whereas it is conclusively established in the record by substantial and convincing evidence, and the Board refused to find that:

(a) "That respondent's dissatisfaction with its previous policy of transferring men from slack departments to busier department existed prior to June 15, 1935, and was, at least, the major reason for its insistence that Articles 5 and 6 in the agreement of June 15, 1935, be in their present form:" and,

(b) "That even after the agreement of June 15, 1935, in an endeavor to keep peace, the respondent again 'tried out' transferring men from slack departments to departments which were busier, and was dissatisfied with the results thereby obtained"

more fully appears in respondent's Third, Fourth, Fifth, and Sixth Exceptions to the Intermediate Report.

G. The Board found that

"The discussions between the management and the shop committee continued until about August 19, 1935, when the shop committee was given the alternative between consenting to an increase in working force of the machine shop with new men and a temporary shut down of the plant on the other. The shop committee was asked to consult the men and advise the management which of these alternatives they preferred. On August 21, 1935, another meeting took place, at which time the committee informed the management that the men considered a temporary complete shut down of the plant as the preferable course."

whereas in truth, the facts were, as appears in the record from the evidence of both respondent's officers and a member of said shop committee, and the Board refused to find:

"(a) That on August 19, 1935, at a meeting between respondent and the employees' committee, the inefficiency of the then existing three days per week schedule at respondent's plant was admitted by the employees' committee.

"(b) That on August 19, 1935, at a meeting between respondent and the employees' committee, the respondent informed said committee that it could not continue operating its plant as it was then being operated, that is, without applying Article 5 of the agreement of June 15, 1935.

"(c) That on August 19, 1935, at a meeting between respondent and the employees' committee, the respondent insisted to said committee that it be permitted to operate its machine shop in accordance with Article 5 of the agreement of June 15, 1935.

"(d) That on August 19, 1935, at a meeting between respondent and the employees' committee, the respondent suggested that the said committee go back and talk to the men and see if they could arrive at a solution of the dispute.

"(e) That on August 21, 1935, at a meeting between respondent and the employees' committee, the latter having previously conferred with its constituents, stated substantially that the committee could suggest no solution to the dispute and that respondent should temporarily close its plant."

as more fully appears from respondent's Twelfth, Thirteenth, Fourteenth, and Fifteenth Exceptions to the Intermediate Report.

H. The Board refused to find the following facts which were clearly established by substantial and convincing evidence which was not denied:

"That of the original 31 employees with whom respondent entered into an agreement in May 1934, only six were regularly employed in the machine shop at that time, their names being Henry Meyer, Paul Brandt, Tony Avon, Ed Stack, Charles Dusek, and John Greeley, and of said six only four, Henry Meyer, Ed Stack, John Greeley, and Charles Dusek, had regular employment in the machine shop after that date."

as more fully appears from respondent's Eighteenth Exception to the Intermediate Report.

I. The Board refused to find the following fact which was clearly established by substantial and convincing evidence:

"That the employees' committee made no request for a meeting with the respondent after August 21, 1935, nor did it after that date evidence any intention to withdraw in the slightest degree from the position it had taken in reference to departmental seniority prior to that date.

as more fully appears from respondent's Twenty-first Exception to the Intermediate Report.

J. The Board imputes to respondent a refusal to re-employ any members of the Mechanics' Educational Society on and after September 3, 1935, and orders back pay for forty-seven (47) M. E. S. A. members from that date forward although it was clearly established by the testimony of the secretary of the complaining union and the Board refused to find:

"That the M. E. S. A. adopted a policy of suspending from its membership those of its members who went to work for respondent after September 3, 1935."

as more fully appears from respondent's Twenty-third Exception to the Intermediate Report.

K. The Board imputes to respondent an effort to reduce wages after the breach but refused to find the following facts which were clearly established by the testimony of the complaining employees themselves:

"That the four complainants with whom respondent had conferences after August 21, 1935, regarding re-employment, were 'key' men and that although the new wage rate offered them was below their previous rate, the respondent offered to guarantee them against any loss of time, as in previous years, so that their total earnings per year would be at least equal to their previous yearly earnings."

as more fully appears from respondent's Twenty-fifth Exception to the Intermediate Report.

L. While the Board imputes to respondent a desire to discriminate because of M. E. S. A. membership, it refused to find the following fact which was clearly established by substantial and convincing evidence and undenied:

"That after August 1, 1935, the employees' committee was looking out chiefly for the 'old' men (the original thirty-one), rather than other M. E. S. A. members who had been employed by respondent prior to that date."

as more fully appears from respondent's Twenty-seventh Exception to the Intermediate Report.

M. In connection with the controversy over transfer of employees from one kind of work to another the Board refused to find the following fact which was clearly established by substantial and convincing evidence which was not denied:

"(a) That there is no piece work in respondent's plant, all employees being paid their respective hourly rates."

as more fully appears from respondent's Twenty-eighth Exception to the Intermediate Report.

N. The Board refused to find the following facts which were admitted in his testimony by the principal officer of the complaining union:

"(a) That during all of the time complainants were in respondent's employ, respondent did not interfere with, restrain, or coerce complainants in respect of their right to self-organization.

"(b) That during all of the time complainants were in respondent's employ, respondent did not interfere with, restrain, or coerce complainants in respect of their right to form, join, or assist labor organizations.

"(c) That during all of the time complainants were in respondent's employ, respondent did not interfere with, restrain, or coerce complainants in respect of their right to bargain collectively through representatives of their own choosing.

"(d) That during all of the time complainants were in respondent's employ, respondent did not interfere with, restrain, or coerce complainants in respect of their right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

"(e) That during all of the time complainants were in respondent's employ, respondent did not interfere with, restrain, or coerce complainants in respect of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection."

as more fully appears from respondent's Twenty-ninth Exception to the Intermediate Report.

O. The Board refused to find the following fact which is clearly established by substantial and convincing evidence:

"There is no evidence that during all of the time complainants were in the respondent's employ, respondent dominated or interfered with the formation or administration of any labor organization or contributed financial or other support to it. In fact, respondent permitted the committee representing the complainants to confer with respondent's officers during working hours without loss of time or pay."

as more fully appears from respondent's Thirtieth Exception to the Intermediate Report.

P. The Board refused to find the following fact which is clearly established by substantial and convincing evidence:

"That during all of the time complainants were in respondent's employ, respondent did not by discrimination in regard to hire or tenure of employment, or any terms or condition of employment, encourage or discourage membership in any labor organization." as more fully appears from respondent's Thirty-first Exception to the Intermediate Report.

Q. In connection with its interpretation of the contract the Board refused to find the following fact which is clearly established by the testimony of the principal officer of the complaining union:

"That the agreement of June 15, 1935, between respondent and its employees was prepared by the employees' committee." as more fully appears from respondent's Thirty-third Exception to the Intermediate Report.

R. The Board refused to find the following fact which is clearly established by the testimony of the principal officer of the complaining union:

"That the employees and their committee, in their dealings with respondent, acted upon the assumption that because there was no prohibition against a strike in their agreement with respondent, whatever their grievance, merited or unmerited, they had a right to strike."

as more fully appears from respondent's Thirty-seventh Exception to the Intermediate Report.

S. The Board refused to find the following fact which is clearly established by substantial and convincing evidence which is undenied:

"That from May 1934 until August 21, 1935, the employees' committee, in increasing amounts, more and more, insisted that they be consulted in the determination of questions properly belonging to the management for determination."

as more fully appears from respondent's Thirty-ninth Exception to the Intermediate Report.

T. The Board refused to find the following facts which were clearly established by substantial and convincing evidence adduced from complaining employees themselves:

"That during the entire period of the negotiations between respondent and the employees' committee, the latter acted arbitrarily and consulted with their constituents very infrequently."

as more fully appears from respondent's Fortieth Exception to the Intermediate Report.

U. The Board refused to find the following fact which was the conclusion of the Trial Examiner who saw and heard the witnesses:

"That much of the difficulty between respondent and its employees might have been averted had the said employees given greater consideration to the wishes of the management in its operation of its plant, particularly in its desire to increase production in the machine shop department during the middle of August 1935."

as more fully appears from respondent's Forty-seventh Exception to the Intermediate Report.

V. In connection with the existence of interference with commerce, the Board refused to find the following facts which are established by substantial and convincing evidence which is undenied:

"That since the closing of the plant on August 21, 1935, and its subsequent opening on September 3, 1935 with a new force of men, although the plant was picketed during the entire month of September:

(a) Respondent filled all its orders promptly;

(b) There was no delay in the shipment of any of respondent's orders;

(c) There was no interruption of deliveries to or from respondent's plant;" as more fully appears from respondent's Forty-ninth Exception to the Intermediate Report.

W. The Board failed to find that respondent's contract with the International Association of Machinists dated September 3rd was an open shop contract not requiring M. E. S. A. employees to forego their membership as a condition of employment.

X. The Board failed to find that of the new men employed after the June strike, nineteen (19) belonged to the A. F. of L. or joined it after being employed, and that these were the so-called new men whom respondent desired to re-employ for its machine shop.

Y. The Board failed to find that all but three (3) foremen were members of the M. E. S. A.

10. The said order is erroneous and ought to be reviewed, reversed, and set aside for the reason that the Board refused to find the following facts showing the condition created in respondent's plant by the activities of the shop committee in breach of their contract which are clearly established by substantial and convincing evidence:

A. "That after the organization of complainants, there developed in increasing proportions a hostility on their parts, and on the part of their committee, toward those of respondent's employees who were not members of the M. E. S. A., which said hostility:

(a) Resulted in discrimination by complainants against non-members of the M. E. S. A.;

(b) Contributed to insubordination on the part of said employees toward foremen who were non-members of the M. E. S. A.;

(c) Contributed to lack of efficiency on the part of respondent's employees;

(d) Adversely affected plant discipline;

(e) Would be in part responsible for respondent's losses."

B. "(a) That whereas George Carbeck, Sr., who prior to April 1934, had worked in respondent's plant for nine years as toolmaker and machine shop foreman, had never had any trouble with the employees, after the organization of the complainants into the M. E. S. A. the men refused to talk or speak to him.

"(b) That after the organization of complainants into the M. E. S. A., complainant Farrell, while George Carbeck, Sr., was ringing the time clock, told at least one of the other employees not to speak to the Carbecks (the father, and the son who was at that time assistant machine shop foreman) and called them a bunch of 'rats'.

"(c) That the Carbecks and other non-M. E. S. A. members ate lunch apart from the M. E. S. A. members.

"(d) That the Carbecks did not join the A. F. of L. until the summer of 1935.

"(e) That the Financial Secretary of complainants announced to Carbeck, Sr., re the discharge of M. E. S. A. members: 'You can't fire them; try it'.

"(f) At least one inefficient workman was passed around from department to department, and each foreman, instead of firing him, passed him on to another foreman, until he had finally made the rounds and got back to the machine shop where he started, and the foreman of the machine shop was afraid to fire him.

"(g) That the M. E. S. A. members refused to speak to George Carbeck, Jr., the assistant foreman of the machine shop.

"(h) That if Carbeck, Jr., said anything to the men by way of directions or instructions, they would get nasty.

"(i) That when men from other departments were transferred to the machine shop, they laid down on the job.

"(j) That during the manufacture of the government order late in 1934, the members of the employees' committee, in attempting to get one of respondent's employees to join the M. E. S. A., told him that if he didn't join the M. E. S. A. he wouldn't stay there very long, and that his job wasn't worth anything if he didn't join the M. E. S. A.

"(k) That the M. E. S. A. men were unfriendly to other employees who were not members.

"(l) That some of the newer men joined the A. F. of L. in the summer of 1935 in the hope that through organization they would be able to get seniority rights comparable to those of the 31 old men.

"(m) That complainants, at the time of the negotiation of the agreement of June 15, 1935, sought to compel the discharge of all non-M. E. S. A. men who were engaged in productive labor; that this included the two Carbecks, who were respectively, the foreman and the assistant foreman of the machine shop.

"(n) That complainants, at the time of the negotiation of the agreement of June 15, 1935, did compel the discharge of two employees whom they had been authorized to represent (Gassell and Kritz) because they would not picket during the strike in May and June 1935."

C. "(a) That during the year 1935 respondent lost \$20,000.00;

(b) That during the year 1934 respondent lost \$40,000.00;

(c) That the prospects for the year 1935 were that respondent would continue to lose money."

more fully appears from respondent's Forty-third, Forty-fourth, and Forty-fifth Exceptions to the Intermediate Report.

Wherefore, respondent prays that the petition of The National Labor Relations Board be dismissed, that the said order of said Board be reviewed, reversed, and set aside, that a copy of this answer and Cross-Petition be forthwith served upon the said Board,

that the said Board may be ordered to dismiss the tofore issued by it against the respondent, and that further proceedings may be had as may be proper

Dated August 4, 1937.

THE SANDS MFG. CO.

STANLEY & SMYER,

970 Union Trust Bldg., Cleveland, Ohio,

Attorneys for the Respondent.

Duly sworn to by Garry Sands; jurat omitted in p

[Clerk's certificate to foregoing paper omitted in p

[File endorsement omitted.]

Supreme Court of the United States

Order allowing certiorari

Filed October 10, 1938

The petition herein for a writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit is granted and the case is assigned for argument immediately following

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition be treated as though filed in response to such writ.


complain
t such as
in the past

., *Responde*

printing.
printing.]

the United States
granted, and
No. 229.
copy of the
the petition

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

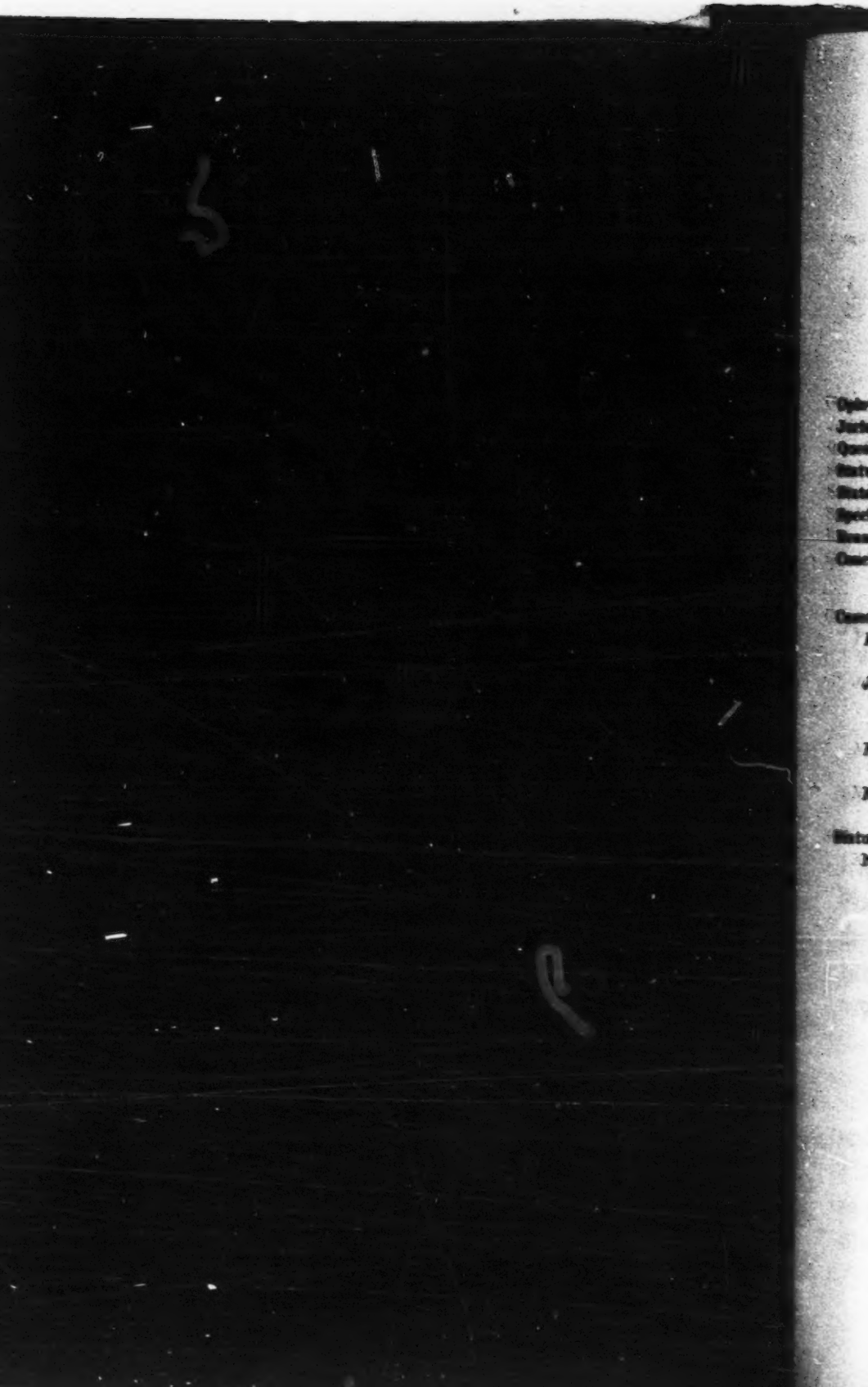
PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES

901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

2
3
2

3
8
-
9
9



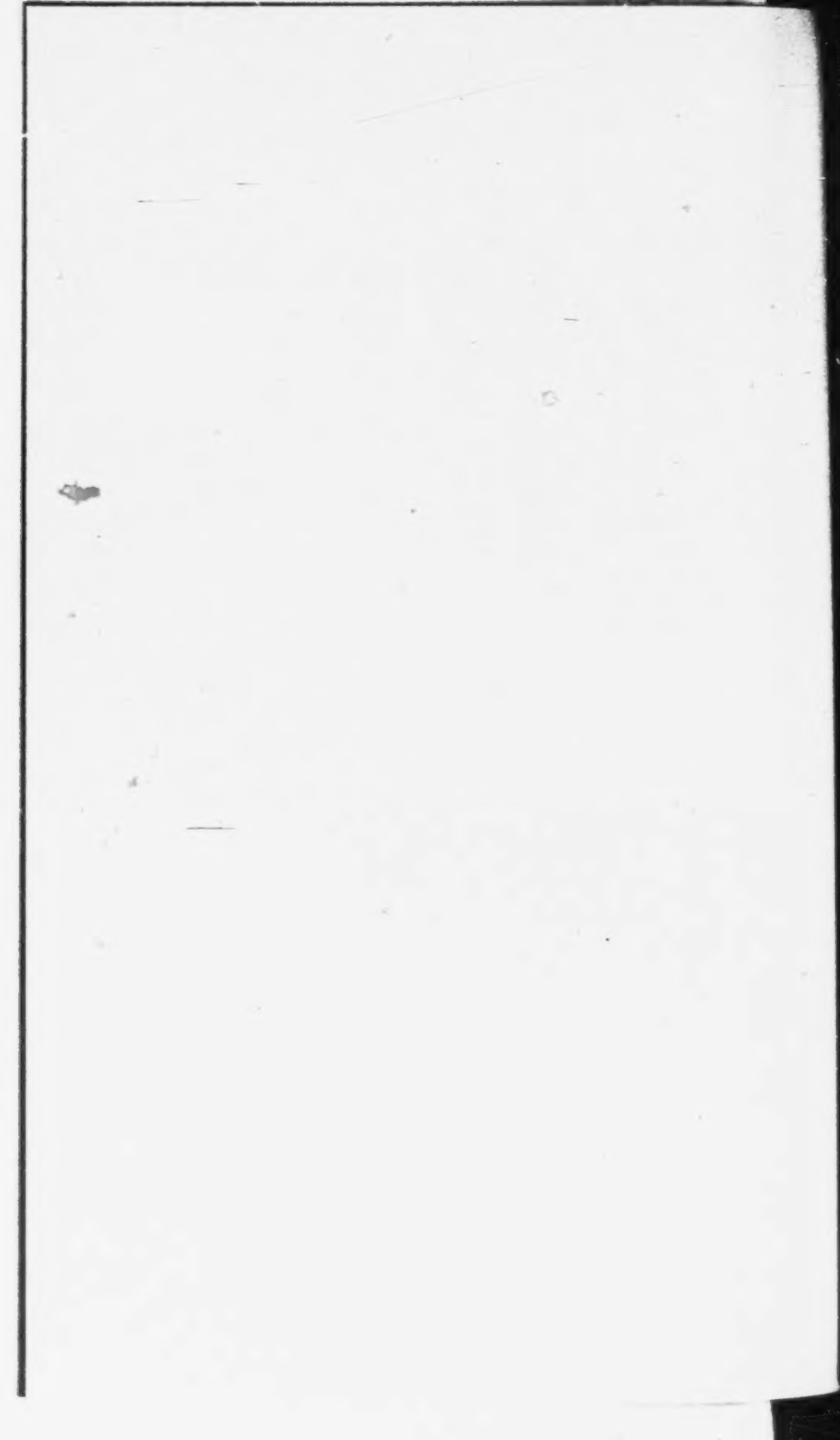


INDEX

	Page
as below.....	1
ction.....	2
ons presented.....	2
e involved.....	2
ent.....	5
ention of errors to be urged.....	11
s for granting the writ.....	12
sion.....	24

CITATIONS

<i>General Trade Commission v. Algoma Lumber Co.</i> , 291 U. S. 17.....	19
<i>Ferry-DeWitt Insulator Co. v. National Labor Relations Board</i> , 91 F. (2d) 134, certiorari denied, 302 U. S. 31.....	13, 15, 16
<i>National Labor Relations Board v. Columbian Enameling and Stamping Co., Inc.</i> , No. 229, October Term 1938.....	18
<i>National Labor Relations Board v. Mackay Radio and Telegraph Co.</i> , 58 S. Ct. 904.....	17, 18
<i>National Labor Relations Act</i> (July 5, 1935), c. 372, 49 Stat. 449 (U. S. C., Supp. II, Title 29, Sec. 151 <i>et seq.</i>):	
Sec. 2.....	3, 17
Sec. 7.....	3
Sec. 8.....	3, 13, 17, 18, 22, 23
Sec. 9.....	4
Sec. 10.....	4, 19, 22



In the Supreme Court of the United States

OCTOBER TERM, 1938

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE SANDS MANUFACTURING COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH
CIRCUIT

The Acting Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit entered on May 13, 1938 (R. 607), denying the petition of the National Labor Relations Board for the enforcement of its order against The Sands Manufacturing Company.

OPINIONS BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 25-42) are reported in 1 N. L. R. B. 546. The opinion of the Circuit Court of Appeals (R. 607-614) is reported in 96 F. (2d) 721.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered May 13, 1938. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the duty of respondent under Section 8 (5) of the Act to bargain collectively with its employees obligated respondent, after prior negotiations had resulted at most in a temporary impasse, to resume negotiations when circumstances had so changed that a settlement of the dispute might reasonably have been expected.

2. Whether there was evidence to support the finding of the Board that certain employees of the respondent were refused reinstatement because they were members of a particular labor organization and had engaged in concerted activities for the purpose of collective bargaining.

3. Whether respondent violated Section 8 (3) of the Act in offering to reinstate certain employees only on condition that they join a particular labor organization, although respondent had no closed shop agreement with that labor organization.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat.

449, U. S. C., Supp. II, Title 29, Sec. 151 *et seq.*)
are as follows:

SEC. 2. When used in this Act—

* * * *

(3) The term "employee" shall include * * * any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, * * *.

* * * *

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, * * *.

* * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, * * * shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

SEC. 10.

* * * * *

(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

STATEMENT

Pursuant to Section 10 (b) of the National Labor Relations Act, the National Labor Relations Board, on November 12, 1935, issued a complaint and notice of hearing, which were duly served upon respondent (R. 7-11). The complaint alleged, in substance, that respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3) and (5) of the Act. An answer was filed by respondent on November 20, 1935 (R. 11-24). A hearing was held from November 25 through November 30, 1935, before a Trial Examiner duly designated by the Board. Thereafter the Trial Examiner filed an intermediate report (R. 42-60), containing his findings and recommendations, to which exceptions were filed by the parties (R. 27, 63-99). Oral argument was had before the Board and respondent filed a brief in support of its position (R. 27). On April 17, 1936, the Board issued its findings of fact, conclusions of law, and order (R. 25-42). The facts, as found by the Board and supported by the evidence, may be summarized as follows:

Respondent is engaged at Cleveland, Ohio, in the manufacture, sale and distribution of gas and kerosene water heaters and is extensively engaged in interstate commerce (R. 28). In 1934, practically all of respondent's production and maintenance employees, who constitute a unit appropriate for the purposes of collective bargaining, were members of Mechanics Educational Society

of America, a labor organization hereinafter termed the M. E. S. A. (R. 28-29, 122-123, 128). After two strikes, respondent and the M. E. S. A. entered into a contract dated June 15, 1935, which contained the following provisions (R. 29-31, 600):

5. That when employees are laid off, seniority rights shall rule, and by departments.

6. That when one department is shut down, men from this department will not be transferred or work in other departments until all old men only within that department, who were laid off, have been called back.

7. That all new employees be laid off before any old employees, in order to guarantee if possible at least one week's full time before the working week is reduced to three days.¹

On June 15, 1935, and at all times thereafter the M. E. S. A. represented a majority of the employees in the appropriate unit (R. 30, 232, 234).

At the beginning of August 1935 the plant was being operated by "old" men on a schedule of 3 days a week (R. 30, 428-429). Respondent desired to shut down all departments of the plant except the machine shop, where the operating force

¹ Throughout the record, the Board's decision and the opinion of the court the term "old" employees refers to men employed by respondent prior to the temporary expansion of its personnel in the fall of 1934 to fill an order placed by the United States Government. "New" employees were those hired to work on that order and those hired thereafter.

as to be increased; a disagreement arose between respondent and the M. E. S. A. as to whether the agreement provided that respondent might recall "new" hands to work in the machine shop while "old" employees were idle because of the shut-down of their departments (R. 31, 34-35, 371-372, 40-471, 555-556). Conferences were held and continued until August 19, 1935, but no resolution of the disagreement was reached. On August 19, Harry Sands, respondent's secretary-treasurer, asked the M. E. S. A. committee to consult the men to ascertain whether they preferred that the entire plant be temporarily shut down rather than that the machine shop force be increased with "new" men (R. 31-32, 375-377, 572). The men preferred the former alternative and on August 21 respondent posted a notice that the plant was closed "until further notice" (R. 32, 351, 377, 433).

Respondent's desire to use additional "new" men in the machine shop was attributable to the fact that wage rates were determined wholly by length of service in the plant and the new men could accordingly receive a lower wage than the "old" employees (R. 36, 372-373, 375-376, 572). Notwithstanding the fact that a general wage reduction was neither proposed by respondent nor discussed at the conferences with the M. E. S. A. during July and August, respondent, without notifying the M. E. S. A., approached the International Association of Machinists, another labor organiza-

tion, on August 26 or 27 and negotiated a contract, effective September 3, at a lower wage scale than it had operated with the M. E. S. A. (R. 32, 37-38, 22, 451-452, 546-547). "New" men who were members of the Machinists were notified to report for work and further help was obtained through the Machinists and from the county relief roles (R. 32, 452-453, 509). Only 4 of the 32 "old" employees who were members of the M. E. S. A. were notified to return; 2 of them were offered employment upon condition that they join the Machinists, and Sands tried to persuade 3 of them to take wage cuts in return for guarantees of steady work (R. 32-33, 315-316, 329-330, 340-341, 353-356, 522-528). Others of the "old" men who applied for their positions were told that their places were taken (R. 33, 449, 525, 528-529, 535). Sands said that the "old" employees would not be recalled to work because their hourly rates of pay were too high (R. 355-356), but the fact is that 15 "new" men belonged to the M. E. S. A. and none of them was notified to return.

When the plant reopened on September 3, the M. E. S. A. protested the lock-out of its members and asked Sands to meet with the committee, but Sands refused a meeting (R. 33-34, 134-135, 529, 569-570). On September 10, respondent, because of its apprehension that the M. E. S. A. might file charges under the Act, procured a cancellation of its week-old contract with the Machinists, so that no issue is here presented as to the validity of that

contract. However, respondent continued to pay the lower wage scale and otherwise observe the terms of the contract (R. 34, 544-546, 602).² There is testimony that Sands intimated that the M. E. S. A. was trying to "break him" (R. 316, 523) and that he pointed out, in rejecting the application of an M. E. S. A. member for reinstatement, that the man had picketed the plant on September 3 and that the M. E. S. A. had filed charges with the Board (R. 397, 529).

The Board found that respondent's failure to bargain with the M. E. S. A. concerning the contract dispute and concerning the new wage issue, which overshadowed all others, violated Section 8 (5) and (1) of the Act, and that by locking out the members of the M. E. S. A. and by imposing membership in the Machinists upon some of them as a condition of reinstatement, respondent had violated Section 8 (3) and (1) of the Act (R. 34-41). The Board accordingly ordered respondent to cease and desist from such unfair labor practices and, as affirmative action necessary to effectuate the policies of the Act, required respondent to reinstate the members of the M. E. S. A. who had been locked

² Garry Sands testified as follows: "I didn't know what would happen if the complaint would be filed upon us, and I thought to myself well what is the use of getting into more difficulties and have two contracts, that I thought it better if I will go down and see if I can get the one contract cancelled and let the other contract take care of itself" (R. 544).

out, with back pay, and to bargain collectively with the M. E. S. A. upon request (R. 41-42).

On June 24, 1937, the Board, pursuant to Section 10 (e) of the Act, filed in the Circuit Court of Appeals for the Sixth Circuit its petition for enforcement of its order. Thereafter respondent filed its cross-petition to review and set aside the order. On May 13, 1938, the court denied the Board's application and set aside the order (R. 607).

The court below rejected as not supported by evidence the Board's findings of fact, supported by the evidence reviewed above, that respondent had abandoned negotiations with the M. E. S. A. and sought out the Machinists at a time when it was under obligation to bargain with the M. E. S. A. as the exclusive representative of its employees (R. 610-613). The court also rejected the Board's conclusion that the merits of the dispute over the interpretation of the contract were irrelevant on the question of the status of the members of M. E. S. A. as employees and respondent's obligation to bargain with them (R. 610-611). It held that the M. E. S. A. had breached the contract by insisting upon an interpretation thereof with which it did not concur, that by virtue of such breach the M. E. S. A. members ceased to be "employees" under the Act and lost all right to further bargaining after respondent had, up to August 21, attempted to persuade them to accept respondent's interpretation of the agreement (R. 611-613). In this view, the court ruled, contrary to the find-

ings and conclusions of the Board (R. 35-39), that the changed conditions after August 21 did not create a situation concerning which respondent was obligated to bargain with the M. E. S. A. as the representative of its employees rather than to bargain with another labor organization which did not represent them (R. 612-613). Ignoring the Board's findings upon evidence (R. 38) that during June and July 1935 respondent had evinced hostility toward the M. E. S. A. and attempted to discourage membership therein, the court held that "the uncontroverted facts as to the complete lack of any attempt to prevent organization or to discourage affiliation with the M. E. S. A." supported its conclusion from the testimony that respondent had in good faith attempted to compose its differences with that union (R. 613). It further held that the Board's finding that the members of the M. E. S. A. had been locked out and discharged by reason of their union affiliation, in violation of Section 8 (3) (R. 613-614), was not supported by evidence and that respondent's imposition of membership in the Machinists as a condition of employment, found by the Board to violate Section 8 (3) (R. 32-33, 39), had "no relation to the controversy here" (R. 614).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In not holding that respondent violated the National Labor Relations Act by failing to bargain

collectively with the duly authorized representative of its employees at a time when changed circumstances indicated a reasonable probability that a prior temporary impasse could be resolved through further negotiation.

2. In not holding that the Board's findings that respondent had, following a temporary lay-off of its employees, denied reinstatement to employees by reason of their affiliation with a particular labor organization, was supported by evidence and was therefore conclusive under Section 10 (e) of the Act.

3. In not holding that respondent violated the National Labor Relations Act by offering reinstatement to employees, following a temporary lay-off, upon condition that they join a labor organization which did not have a closed-shop contract with the employer.

4. In not holding that employees who cease work by reason of a temporary lay-off following a temporary impasse in negotiations between their representatives and their employer, remain "employees" for the purposes of the National Labor Relations Act.

5. In denying enforcement to the Board's order.

REASONS FOR GRANTING THE WRIT

I

The decision of the court below in refusing to enforce the order of the Board requiring respondent to cease and desist from its refusal to bargain col-

tively with the M. E. S. A. is in direct conflict with the decision of the Circuit Court of Appeals for the Fourth Circuit in *Jeffery-DeWitt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 139, 4, certiorari denied, 302 U. S. 731.

In each case the question at issue was the extent of the obligation of the employer to bargain with its employees as required by Section 8 (5) of the Act. In the *Jeffery-DeWitt* case the negotiations had reached a stalemate on June 20, 1935. Almost a month later, on July 15, conciliators from the United States and the West Virginia Departments of Labor, which had been instrumental in settling previous strikes against the company, offered their services as mediators. The refusal of the company to reopen the negotiations under these changed circumstances was held by the Board to have been a violation of Section 8 (5). The Circuit Court of Appeals, in affirming the order, said (91 F. (2d) 139):

The company's second contention is that it was not guilty of an unfair labor practice in refusing to bargain with the union on and after July 15th, for the reason that efforts to bargain with it prior to June 20th had resulted in failure and an impasse in the negotiations had been reached. The answer to this is that nearly a month of "cooling time" had elapsed since the negotiations of June 15th to 20th, the status of the controversy had undergone considerable change as a result of the operation of the plant, the

striking employees after nearly a month of idleness were doubtless willing to make concessions to compromise the matters in difference, and conciliators had arrived upon the scene for the purpose of trying to secure an adjustment.

The instant case presents the same question in a more aggravated form. After several conferences with the representatives of the M. E. S. A. concerning the question of whether "old" or "new" men should work in the machine shop under the contract of June 15, the plant was closed on August 21 under conditions which left the members of M. E. S. A. in the status of employees.²

² There is no indication whatsoever in the evidence that this temporary shut-down of the plant was intended or understood as a discharge of the men (see R. 37). Frank Pansky, a member of the M. E. S. A. committee, testified that at the August 19 meeting Sands stated that if respondent's proposed actions were not acceptable to the union, "maybe we will shut down the factory for a week or two until some work comes in, * * *" (R. 376-377). Jindra, another M. E. S. A. representative, quoted Sands as stating that the plant would have to "shut up for two weeks" (R. 572). Sands denied saying anything on August 19 about closing the plant for a week or two, but testified that he directed the Committee to consult the men "and see if they have any suggestions to offer and what we can do about it" and that the Committee returned on August 21 and asked that the plant be shut down and respondent "wait until you get busy so as to take back all the old men" (R. 519-520, 553, 556). Sands thereupon directed the posting of the notice on the time clock that the plant was closed "until further notice" (R. 520, 351).

Nothing, at that time, indicated that a permanent impasse had been reached or that respondent had, because it differed with the M. E. S. A. on the interpretation of the contract, discharged its employees. At that time it was clearly intended by both parties that, through a temporary shut-down, enough orders would accumulate so that all the old men would be employed in their own departments, and the issue in controversy would become moot. It is certainly contrary to the *Jeffery-DeWitt* case to say that, in a situation where both parties intended that all difficulty be resolved through changed circumstances arising with the passage of time, an impasse had been reached which relieved respondent of all duty thereafter to bargain with its employees.

The conflict between the instant decision and that in the *Jeffery-DeWitt* case is actually even clearer than that. The evidence leaves no doubt that the dispute between respondent and M. E. S. A. was a dispute concerning wage rates: reduction in wage costs was the moving cause behind respondent's insistence on its right to hire "new" men (R. 372-373, 376-377, 430-432, 522-523, 572). After the shut-down of the plant a new factor, extremely relevant to this controversy, appeared when respondent manifested, in its offers of reinstatement to four of the "old" employees, a willingness to guarantee steady work in return for a reduction in the hourly rates of pay (R. 37-38,

522-525, 547-548). The Board found upon evidence that there was every reason to suppose that, in negotiations with the M. E. S. A., this offer might have led to a solution of the entire difficulty (R. 38, 316). But respondent never presented the offer to the M. E. S. A.; it settled the controversy in a different way, by bargaining with another union which did not represent its employees and obtaining from that union substantial cuts in wages. Under the rule of the *Jeffery-DeWitt* case, certainly respondent, in the changed circumstances presenting a new issue which created substantial likelihood that the entire conflict could be satisfactorily resolved, was under an obligation to resume its bargaining with the M. E. S. A., discontinued but one week previously.

The court below apparently deemed the *Jeffery-DeWitt* case irrelevant on the ground that here the employees had, by their conduct, broken the contract of June 15, 1935, and that for that reason respondent was justified in discharging them, and was no longer under any obligation to bargain collectively with them. This basis of distinction is without substance.

(a) Whether or not respondent would have been justified in discharging the M. E. S. A. employees, it is plain that the employees had not been discharged at the time respondent undertook to negotiate with the Machinists. They had not been discharged on August 21 and were employees laid

off "until further notice" (*supra*, note 3). Nothing further had occurred which could interrupt the employee status when, shortly after August 21, respondent opened negotiations with the Machinists, signed an agreement with that union, and reopened its plant. Certainly, on the facts here presented it cannot be contended that the old men were discharged until others were actually hired to take their places. But long before that time respondent had negotiated and signed an agreement with the Machinists. While these negotiations were going on the M. E. S. A. was, therefore, still the representative of a majority of the employees of the respondent, and the latter was guilty of a violation of Section 8 (5), as found by the Board, in failing to negotiate with that union.

(b) Nor does the suggestion of the court below, wholly unwarranted on the facts, that the shutdown of August 21 was "equivalent to a strike" (R. 613), help respondent. Whether or not the employees were correct in the position they took on the issue which caused the "strike"—the interpretation of the contract—the "strike" did not, without more, sever the employment relationship under Section 2 (3) of the Act. *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 58 S. Ct. 904, 910. The ruling of the court below that the "strike" terminated the employment relations is in conflict with the *Mackay* case and the

clear terms of the Act. The men continued to be employees and the respondent's duty to bargain with them remained unimpaired.

(c) The court below apparently also placed its decision partly on the ground that the breach of contract by the employees justified the respondent in refusing to bargain collectively with them (See R. 610, 613). The Government has pointed out in its petition for certiorari in *National Labor Relations Board v. Columbian Enameling and Stamping Co., Inc.*, No. 229, October Term, 1938, that such a holding is plainly unwarranted under the Act. The same arguments are applicable here. We respectfully refer this Court to pages 14 to 22 of the Government's petition in that case.

II

The unfair labor practices under Section 8 (3) in the instant case are very similar to those present in *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, *supra*. In each case men, who retained their status as employees during a temporary cessation of work, were refused reinstatement. In each case the basis for the refusal was the union affiliation and activity of the men excluded and the fact that they had engaged in concerted activity for the purposes of collective bargaining.

This Court, in the *Mackay* decision, pointed out clearly that a strike growing out of a labor dispute

did not deprive the employees of the protection of the Act. The court below reached the opposite result by ignoring positive evidence in the record and concluding that "no evidence appears" that the employees were refused reinstatement because of their membership in the union.

The Government is aware that error of decision relating to a matter of evidence does not ordinarily rank as a reason for granting a writ of certiorari. It is, however, highly important that the respective functions of the National Labor Relations Board and the courts in the administration and enforcement of the National Labor Relations Act be properly delineated, and that effect be given to the express statutory declaration that "the findings of the Board as to the facts, if supported by evidence, shall be conclusive." Section 10 (e). As the following review of the evidence will demonstrate, The Court of Appeals, though professing adherence to this mandate, honored it * * * with "membership service only." *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 73. Circumvention of the express statutory limitation upon the courts' right to review the Board's findings of fact, such as was done by the court below, serves to nullify the statutory provision. This petition for certiorari should be granted in order that this Court, in the exercise of its supervisory powers, and for the guidance of subsequent proceedings in the lower

federal courts, may declare that the mandate of Congress is not to be thus evaded.

With respect to the issue on this branch of the case—the discrimination against the M. E. S. A. members upon the reopening of the plant—the Board found (R. 38-39):

The whole conduct of the respondent leaves no other reasonable inference than that the old employees were locked out, discharged and refused employment because they were members of the Mechanics Educational Society of America and had engaged in concerted activities for the purpose of collective bargaining.

The court below stated (R. 613):

In this case no evidence appears that the employees were discharged because of their membership in the M. E. S. A. or any union.

The court below likewise referred to the “uncontroverted facts as to the complete lack of any attempt to prevent organization or to discourage affiliation with the M. E. S. A.” (R. 613).

These statements by the court are wholly unjustified on this record. The single circumstance that, after their temporary lay-off because of the shut-down of the plant, the M. E. S. A. employees were not recalled to work, and their positions given to members of the Machinists and persons not previously employed in the plant is, in the absence of explanatory circumstances, cogent evidence that

iliation with the M. E. S. A. was the reason the men here involved were excluded.⁴ The Board's finding is further supported by evidence of respondent's hostility toward the M. E. S. A. and preference for the Machinists which the Board was entitled to credit. Hilliard J. Sands, respondent's superintendent, admitted that, late in June 1935, he replied to a complaint that some of the new men hired since the June strike were being solicited to join the Machinists soon after their hiring, contrary to an understanding between the M. E. S. A. and respondent, with the observation that he preferred the Machinists because it was a more conservative union (R. 38, 420-421, 217-220). The Board found, upon conflicting testimony, that the assistant superintendent told an employee dismissed in June, "I will get you back when we break this union up" (R. 38, 303, 504). After the plant reopened on September 3, Garry Sands, respondent's secretary-treasurer, intimated that the M. E. S. A. was trying to "break him," and, in refusing

It cannot be contended that respondent excluded the M. E. S. A. members because they were classified as "old" men at higher wage rates than the men who replaced them. Included among the 43 M. E. S. A. members not recalled to work were 15 "new" employees. Assuming that respondent could, consistently with its obligations under the Act, place its employees because their wages were too high and without affording them a chance to agree to a reduction, it is clear that membership in the M. E. S. A., and not status as more highly paid employees, was the reason the men were excluded.

to reinstate one of the M. E. S. A. members, remarked that that union had filed charges with the Board and that the applicant had partaken in the M. E. S. A. picketing of the plant (R. 316, 397, 523, 529). The testimony of Garry Sands, who shaped respondent's labor policies, is pregnant with lack of understanding of and hostility to the discharge of an employer's obligations under the Act (R. 515-517, 529, 540-541).

The evidence, thus summarized, fully supported the Board's findings. In disturbing or ignoring those findings, the court below frustrated the legislative intent, clearly expressed in Section 10 (e), that the appraisal of the evidence and necessary application of the inferential process be made by a specialized administrative agency familiar with the fact situations and problems involved and that the judgment of that body upon the facts be final in the absence of arbitrariness or caprice. In so doing the court usurped the function vested in the Board under the Act and, in exercising the Board's function, ignored evidence upon which the Board rightly relied to support its findings.

III

The failure of the court below to hold that it was an unfair labor practice under Section 8 (3) of the Act for respondent to impose, as a condition of employment, membership in a labor organization with

which it did not have a closed-shop contract, is contrary to the clear terms of the Act, and raises a serious question as to its proper administration.

The facts of the violation are that Linski and Pansky, both M. E. S. A. members, were offered reinstatement by Garry Sands upon condition that they join the Machinists (R. 32-33, 341, 355, 528). On these facts the Board concluded that respondent had violated Section 8 (3) of the Act, making it an unfair labor practice for an employer:

By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; * * * [Italics supplied].

Language could not be clearer.

Notwithstanding the clear violation of the Act, the court below refused to enforce the Board's order, saying (R. 614):

The respondent suggested during September to two of its old employees that they join the American Federation of Labor as a condition of employment. Since the contract had already been abrogated and the men had been discharged, and since the M. E. S. A. was no longer the exclusive representative of the employees, these acts have no relation to the controversy here.

This disposition of the matter by the court is incomprehensible. We have already shown, pp. 14-15, *supra*, that the men were not discharged, and that the M. E. S. A. remained the exclusive

representative of the employees, but even had the contrary been true, it was a plain violation of the statute to offer them employment on condition that they join the Machinists. The so-called abrogation of the contract is wholly irrelevant. To avoid serious confusion and embarrassment in the future enforcement of the Act this Court should, we submit, correct this obvious error.

IV

The questions raised by the decision of the court below as to the proper administration of the National Labor Relations Act are clearly of public importance, and should be passed upon by this Court.

CONCLUSION

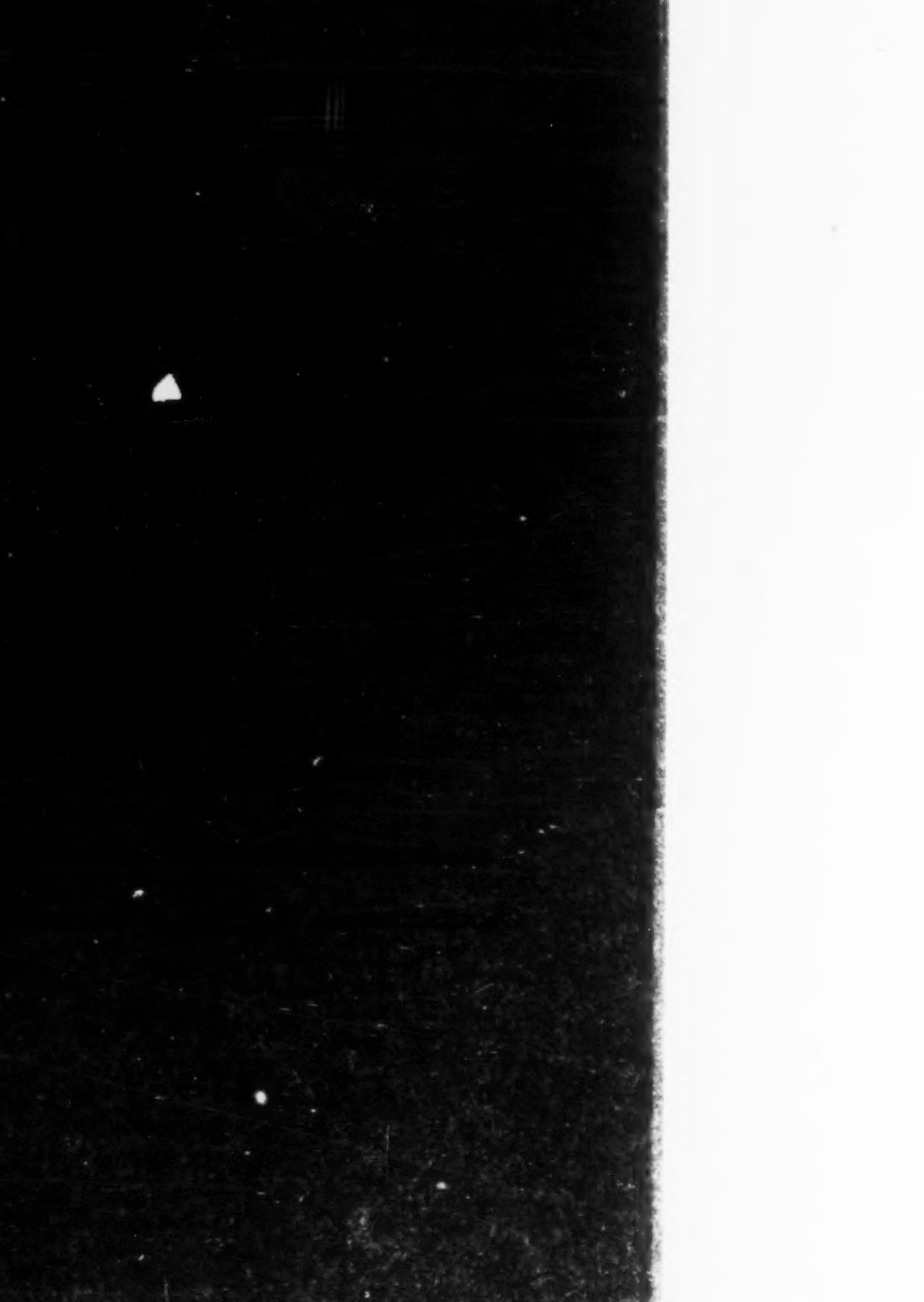
Wherefore, we respectfully submit that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Sixth Circuit should be granted.

N. A. TOWNSEND,
Acting Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

AUGUST 1938.





INDEX

	Page
ions below	1
adiction	1
ations presented	2
ate involved	2
ement	3
ification of errors to be urged	10
mary of argument	11
ument:	
I. The Board correctly held that respondent had violated Section 8 (5) of the Act	15
A. Respondent's obligation to bargain collectively with the M. E. S. A. committee had not been satisfied by the conferences prior to August 21	17
B. The contract of June 15, 1935, is irrelevant to respondent's obligation under Section 8 (5)	29
1. The correct interpretation of the con- tract of June 15, 1938, is irrelevant to respondent's failure to bargain collec- tively	29
2. The dispute over the proper interpreta- tion of the contract did not abrogate the contract or sever the employer- employee relationship	33
II. The evidence fully supports the Board's finding that respondent had failed to reinstate employees because of their membership in the M. E. S. A. in violation of Section 8 (3) of the Act	40
III. Respondent's offer of reinstatement to certain of its M. E. S. A. employees upon condition that they join the Machinists was in violation of the Act	49
Conclusion	51
Index	53

CITATIONS

Algonquin Printing Co., 1 N. L. R. B. 264	51
Del Vecchio v. Bowers, 296 U. S. 280	48

(I)

II

Cases—Continued.

	Page
<i>Federal Trade Commission v. Algoma Lumber Co.</i> , 291 U. S. 67.....	47, 48
<i>Federal Trade Commission v. Pacific States Paper Trade Ass'n</i> , 273 U. S. 52.....	48
<i>Federal Trade Commission v. Standard Education Society</i> , 302 U. S. 112.....	48
<i>Jeffery-De Witt Insulator Co. v. National Labor Relations Board</i> , 91 F. (2d) 134, certiorari denied, 302 U. S. 731.....	12, 17, 27, 28, 47, 51
<i>Jewel Tea Co. v. Himmelstein</i> , 164 Wis. 325.....	36
<i>Kelly-Springfield Tire Co.</i> , 6 N. L. R. B. 325, 97 F. (2d) 1007.....	51
<i>Louisville & Nashville R. R. Co. v. Harvey</i> , 15 Ky. L. R. 809.....	36
<i>Matter of Chicago Defender, Inc.</i> , 1 N. L. R. B. (old) 119.....	39
<i>Montgomery Ward & Co.</i> , 4 N. L. R. B. 1151.....	51
<i>National Labor Relations Board v. Biles Coleman Lumber Co.</i> , 98 F. (2d) 18.....	17
<i>National Labor Relations Board v. Carlisle Lumber Co.</i> , 94 F. (2d) 138, certiorari denied, No. 907, May 23, 1938.....	17, 51
<i>National Labor Relations Board v. Jones & Laughlin Steel Corp.</i> , 301 U. S. 1.....	17, 37
<i>National Labor Relations Board v. Mackay Radio & Telegraph Co.</i> , 304 U. S. 333.....	40, 51
<i>National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.</i> , 303 U. S. 261.....	28
<i>National Labor Relations Board v. Remington Rand, Inc.</i> , 94 F. (2d) 862, certiorari denied, No. 970, May 23, 1938.....	18
<i>National Motor Bearing Co.</i> , 5 N. L. R. B. 409.....	38
<i>Percival v. National Drama Corp.</i> , 181 Cal. 631.....	36
<i>Semel-Solway Co. v. Wilcox</i> , 143 Fed. 839.....	36
<i>Swayne & Hoyt, Ltd. v. United States</i> , 300 U. S. 297.....	48
<i>Texas & New Orleans R. Co. v. Brotherhood of Railway Clerks</i> , 281 U. S. 548.....	17
<i>United States Navigation Co. v. Cunard S. S. Co.</i> , 284 U. S. 474.....	49
<i>Virginian Ry. Co. v. System Federation No. 40</i> , 300 U. S. 515.....	17, 37, 38
<i>Washington, Virginian & Maryland Coach Co. v. National Labor Relations Board</i> , 301 U. S. 142.....	28
<i>Zenite Metal Corp.</i> , 5 N. L. R. B. 509.....	38

Statute:

Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Supp. III, Title 29, Sec. 151 et seq.....	53-54
--	-------

Miscellaneous:

Hearings on Senate Bill No. 1958, 74th Cong., 1st Sess., Pt. 1, p. 43.....	38
Public Resolution No. 44, 73d Cong.....	39

In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 274

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE SANDS MANUFACTURING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 25-42) are reported in 1 N. L. R. B. 546. The opinion of the Circuit Court of Appeals (R. 607-614) is reported in 96 F. (2d) 721.

JURISDICTION

The judgment of the court below (R. 614) was entered May 13, 1938. The petition for a writ of certiorari was filed on August 13, 1938, and was granted on October 10, 1938. The jurisdiction of this Court rests on Section 240 (a) of the Judicial

Code as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the duty of respondent under Section 8 (5) of the National Labor Relations Act to bargain collectively with its employees obligated respondent, after prior negotiations had resulted at most in a temporary impasse, to resume negotiations when circumstances had so changed that a settlement of the dispute might reasonably have been expected.

2. Whether there was evidence to support the finding of the National Labor Relations Board that certain employees of the respondent were refused reinstatement because they were members of a particular labor organization and had engaged in concerted activities for the purpose of collective bargaining.

3. Whether respondent violated Section 8 (3) of the National Labor Relations Act in offering to reinstate certain employees only on condition that they join a particular labor organization, although respondent had no closed-shop agreement with that labor organization.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. III, Title 29, Sec. 151, *et seq.*) are set forth in the Appendix, pp. 53-54, *infra*.

STATEMENT

Upon a charge (R. 6) duly filed by the Mechanics Educational Society of America (hereinafter referred to as the M. E. S. A.), a labor organization, the National Labor Relations Board, on November 12, 1935, pursuant to Section 10 (b) of the National Labor Relations Act, issued a complaint and notice of hearing, which were duly served upon respondent (R. 7-11). In addition to jurisdictional allegations, the complaint alleged, in substance, that respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3), and (5) of the Act (R. 7-10). On November 20, 1935, an answer was filed by respondent, in which it denied the commission of the unfair labor practices (R. 11-24). A hearing was held from November 25 through November 30, 1935, before a Trial Examiner duly designated by the Board (R. 24). Thereafter the Trial Examiner filed an intermediate report (R. 42-62) containing his findings and recommendations, to which exceptions were filed both by respondent and the M. E. S. A. (R. 27, 63-99). Respondent argued the case orally before the Board, and filed a brief in support of its position (R. 27). On April 17, 1936, the Board issued its decision, setting forth its findings of fact, conclusions of law, and order (R. 25-42). The facts, as disclosed by the Board's findings, fully supported by evidence, may be summarized as follows:

Respondent is an Ohio corporation, with its principal office and place of business in Cleveland, Ohio. It is engaged in the manufacture, sale, and distribution of gas and kerosene hot water heaters. During the period from January 1 to October 1, 1935, its purchases of raw materials totalled \$181,828.51, of which the purchases from within the State of Ohio totalled \$106,616.31. During approximately the same period the value of its shipments of finished products and parts totalled \$318,117.06, of which shipments outside Ohio amounted to \$284,025.91 (R. 28). There is no question raised as to the jurisdiction of the Board.¹

Early in 1934 practically all of respondent's production and maintenance employees, which the Board found to constitute a unit appropriate for collective bargaining (R. 29), became members of the M. E. S. A. (R. 28-29; 122-123, 128). In April 1934 these members of the M. E. S. A. designated a committee (R. 29; 597), which, after negotiations with respondent, entered into a collective agreement with it (R. 29; 122, 127-128, 598-599). The agreement was to run for 60 days, but by mutual consent the parties continued to operate under it until May 1935, when negotiations for a new agreement commenced (R. 29; 124-125, 411). After two strikes occurring during the course of these negotiations

¹ Respondent's contention that the Act was constitutionally inapplicable to its business and the employees involved was abandoned by it prior to the argument in the court below.

(R. 29-30; 137-142, 147, 257-264, 358-361, 414-416) the M. E. S. A. committee and respondent entered into a contract dated June 15, 1935 (R. 30; 600). This contract contained, *inter alia*, the following provisions (R. 31; 600):

(5) That when employees are laid off, seniority rights shall rule, and by departments.

(6) That when one department is shut down, men from this department will not be transferred or work in other departments until all old men only within that department, who were laid off, have been called back.

(7) That all new employees be laid off before any old employees, in order to guarantee if possible at least one week's full time before the working week is reduced to three days.²

On June 15, 1935, and at all times thereafter, the M. E. S. A. represented a majority of respondent's employees in the appropriate unit (R. 29, 30; 232, 234-235).

Upon the full resumption of operations on June 17, 1935, respondent added about 30 "new" men

² Throughout the record, the Board's decision, the opinion of the court below, and this brief, the term "old" employees refers to the men employed by respondent prior to a temporary expansion of its personnel in the fall of 1934 to fill an order placed by the United States Government. "New" employees were those hired to work on that order as well as those hired thereafter (R. 29; 244, 605, 610n). The "old" men totalled 34, of whom 32 were M. E. S. A. members (R. 122-123, 128, 597).

to its pay roll to enable it to fill the orders which had accumulated during the strikes (R. 30; 234, 421-422). As soon as the orders were filled, however, respondent proceeded to reduce its force so that by the end of July all of the "new" men were laid off (R. 30; 220-222, 516-517). In fact, from the middle of July on operations were being curtailed, and by August 2 the plant was being operated by "old" men only on a schedule of 3 days a week (R. 30; 428-429, 554-555).

At about this time respondent wished to increase the working force in the machine shop, and to close down the other departments (R. 31; 470-471, 517). A disagreement arose between respondent and the M. E. S. A. as to whether, under the June 15 contract, respondent might increase its working force in the machine shop by the recall of "new" men who had had machine shop experience, or whether, as the M. E. S. A. insisted, respondent should transfer "old" employees to the machine shop from the other departments which were to be shut down (R. 31, 34-35; 371-372, 375, 470-471, 555-556). Conferences on this subject were held and continued until August 19, 1935, but no resolution of the disagreement was reached (R. 31; 286, 371-372). On August 19, Garry Sands, respondent's secretary-treasurer, asked the M. E. S. A. committee to consult the men to ascertain whether they preferred that the entire plant be temporarily shut down rather than that the machine shop force be increased with "new" men while "old" men were idle (R. 31-

32; 375-377, 572). The men preferred the former alternative, and on August 21, respondent posted a notice that the plant would close that night "until further notice" (R. 32; 14, 351). The impelling motive for respondent's desire to use additional "new" men in the machine shop, rather than to transfer "old" employees to that department was the fact that wage rates were determined wholly by length of service in the plant, and the "new" men would accordingly receive a lower wage than the "old" men (R. 36; 372-373, 375-376, 572).

On August 26 or 27, while the plant was still closed, respondent approached the International Association of Machinists, another labor organization (hereinafter referred to as the Machinists) (R. 22; 450). Notwithstanding the fact that a general wage reduction was neither proposed by respondent nor discussed at the conference with the M. E. S. A. during July and August, respondent immediately negotiated a contract with the Machinists, effective September 3, at a lower scale of wages (R. 32, 37-38; 450-452, 546-547, 553-554).

The plant was reopened on September 3 (R. 32, 22). Only such "new" men as were members of the Machinists³ were notified to report for work, and further men were obtained through the Ma-

³Of the approximately 35 "new" men taken on by respondent in 1934 to work on the government order (footnote 2, p. 5, *supra*) all but three or four joined the M. E. S. A. (R. 29; 18, 130, 136). Of the "new" men employed for the first time after June 17, 1935, to work on the orders

chinists and from the county relief rolls (R. 32; 22, 452-453). Of the "old" employees who were members of the M. E. S. A. only four were notified to return; two of them were offered employment on condition that they join the Machinists, and Garry Sands attempted to persuade at least three of them to take wage cuts in return for guarantees of steady work (R. 32-33; 329-330, 340-341, 343-346, 353-356, 390-391, 445-448, 522-528). Others of the "old" men who applied for their positions after the plant reopened were told that their places had been taken (R. 33; 22, 528-529, 535). Although Garry Sands stated that the "old" employees would not be recalled to work because their hourly rates of pay were too high (R. 33; 355-356), the fact is undisputed that a considerable number of "new" men belonged to the M. E. S. A., none of whom were asked to return (R. 32; 22, 198-199, 452-453). In all, respondent failed to reinstate 47 members of the M. E. S. A., made up of both "old" and "new" employees, upon the reopening of its plant on September 3, 1935 (R. 39; 558-559).

On the day following the reopening of the plant, the M. E. S. A. protested the lock-out of its members, and asked Garry Sands to meet with the M. E. S. A. committee, which he refused to do (R.

accumulated during the two strikes preceding the execution of the June 15 contract (pp. 5-6, *supra*), some had joined the M. E. S. A. and some had joined the Machinists (R. 33; 235-236, 244).

33-34; 134-135, 529-530, 569-570). On September 10 respondent, because of its apprehension that the M. E. S. A. might file charges under the Act, procured a cancellation of its week-old contract with the Machinists, so that no issue is here presented as to the validity of that contract (R. 34; 531, 544-546, 602). Respondent continued, however, to pay the lower wage scale and otherwise observe the terms of the contract (R. 34; 544-546).

The Board found, after a review of the evidence which is set out at pp. 41-46, *infra*, that the members of the M. E. S. A. were locked out, discharged, and refused employment because of their M. E. S. A. membership (R. 38-39), and that by this discrimination, and by the imposing of membership in the Machinists upon some of them as a condition of reinstatement, respondent had violated subdivisions (1) and (3) of the Act (R. 40-41). The Board also found that respondent had failed to bargain with the M. E. S. A. concerning the contract dispute, the failure to abide by the understanding reached on August 21, and the new wage issue (R. 38), in violation of subdivisions (1) and (5) of the Act (R. 40-41). The order of the Board (R. 41-42) required respondent to cease and desist from such unfair labor practices and, as affirmative action necessary to effectuate the policies of the Act, required respondent to reinstate, with back pay, the members of the M. E. S. A. who had been locked out, and to bargain collectively with the M. E. S. A. upon request. On June 24, 1937, the

Board, pursuant to Section 10 (e) of the Act, filed in the court below its petition for enforcement of its order. Thereafter respondent filed its cross-petition to review and set aside the order. On May 13, 1938, the court dismissed the Board's petition to enforce, and set the order aside (R. 697). On October 10, 1938, this Court granted a writ of certiorari (R. 615).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In not holding that respondent violated the National Labor Relations Act by failing to bargain collectively with the duly authorized representative of its employees at a time when changed circumstances indicated a reasonable probability that a prior temporary impasse could be resolved through further negotiation.
2. In not holding that the Board's finding that respondent had, following a temporary lay-off of its employees, denied reinstatement to employees by reason of their affiliation with a particular labor organization, was supported by evidence and was therefore conclusive under Section 10 (e) of the Act.
3. In not holding that respondent violated the National Labor Relations Act by offering reinstatement to employees, following a temporary lay-off, upon condition that they join a labor organization which did not have a closed-shop contract with the employer.

4. In not holding that employees who cease work by reason of a temporary lay-off following a temporary impasse in negotiations between their representatives and their employer remain "employees" for the purposes of the National Labor Relations Act.

5. In denying enforcement to the Board's order.

SUMMARY OF ARGUMENT

I

A. The National Labor Relations Board found, upon compelling evidence, that respondent had violated Section 8 (5) of the Act by failing to bargain collectively with the M. E. S. A. committee, the duly designated representatives of the majority of its employees. The finding was clearly correct. For several weeks respondent and the committee had discussed the problem of seniority raised by respondent's decision to close down all but the machine shop of its plant and to increase the force in that department. Respondent contended that under the June 15 contract it could employ "new" men in the machine shop; the committee contended that the additional men should be selected from qualified "old" employees from other departments of the plant. On August 21, 1935, at respondent's suggestion, the whole plant was temporarily closed to allow orders to accumulate until all departments of the plant could reopen at once and the seniority problem be at least temporarily eliminated.

Since August 21 respondent has failed to bargain with the committee, although on at least three issues it was under a plain obligation to do so. The construction of the contract had been discussed, but no one believed that a permanent impasse had been reached, nor was there any evidence that if and when the issue again arose it could not have been solved by further conferences. Moreover, respondent created a new issue upon which it was obligated to bargain when its plant reopened on September 3 without the M. E. S. A. men contrary to the understanding reached by the parties on August 21. Finally, respondent brought sharply to the foreground after August 21 an issue underlying the whole dispute from its viewpoint—the wage rates of the “old” employees. The controversy had not been discussed from that approach, and not until it had been explored by the committee could it properly be said that further negotiations would be fruitless. That the two latter issues arose subsequent to the temporary cessation of negotiations is of no consequence. *Jeffery-De Witt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731.

B. Respondent's failure to bargain is not excused either on the ground that the committee had misinterpreted the seniority provisions of the contract of June 15 or upon the ground that the M. E.

S. A. employees were discharged before the obligation to bargain arose. Actually, the committee's interpretation of the contract was probably correct, but, irrespective of that, the interpretation of the contract is irrelevant to respondent's obligation. Obviously it could have no bearing upon the new issues raised after August 21. And on the issue of the construction of the contract the obligation imposed by Section 8 (5) is not conditioned upon a finding that existing conditions be left undisturbed. The purpose of the Act is to encourage the procedure of collective bargaining for the settlement of all differences. Finally, since no actual breach of the contract had occurred, respondent was no more justified in refusing to deal with the committee after August 21 than it would have been when the issue was first raised.

Nor did respondent discharge the M. E. S. A. employees before its obligation to bargain arose. The evidence shows clearly that the M. E. S. A. members remained employees at least until September 4, when a specific request for a conference was made on their behalf. Moreover, respondent had violated Section 8 (5) of the Act by negotiating an agreement with a union not the representative of the majority of its employees on August 26 and 27, and at that time there can be no doubt that the M. E. S. A. men had not been discharged. In any event, if, as the Board found, the M. E. S. A. men were

discharged because of their membership in that union, under Section 2 (3) they remained employees for purposes of the Act.

II

The Board also found, upon a full review of the evidence, that the M. E. S. A. employees had been discharged because of their union membership and activity. The court below held that there was no evidence to support this finding. We submit that the finding is amply supported. Respondent does not deny that it peremptorily eliminated all of the M. E. S. A. employees. That fact alone, taken in conjunction with the complete breakdown of respondent's attempts to explain the mass discharge, leads irresistibly to the conclusion reached by the Board. Moreover, the record reveals that respondent had become hostile to the M. E. S. A. following two strikes which had occurred in May and June, 1935. Various of respondent's officers and supervisors made remarks plainly indicating hostility to the M. E. S. A. Finally, respondent's explanations of the mass discharge fail completely. Its contention that the M. E. S. A. men were discharged because they had breached the contract is refuted by its offer to re-employ four of the men who had been "guilty" of "contract breaking." Its contention that the men were discharged because their wages were too high is refuted by the fact that it did not offer to re-employ even the low-priced M. E. S. A. men. Its contention that none of the M. E. S. A.

men applied for reemployment is plainly refuted by its notification on August 21 that the men would be given "further notice" when the plant reopened, and by the fact that in the past it had always notified the men when the plant reopened.

III

The Board found that offers of reinstatement to two of the M. E. S. A. men were conditioned upon their joining the Machinists. The court below accepted the finding, but on wholly irrelevant grounds refused to enforce the portions of the Board's order directed to that violation. The offers were plain violations of Section 8 (3) of the Act.

ARGUMENT

I

THE BOARD CORRECTLY HELD THAT RESPONDENT HAD VIOLATED SECTION 8 (5) OF THE ACT

The conclusion of the National Labor Relations Board that respondent had been guilty of a violation of Section 8 (5) of the Act in failing to bargain collectively with the representatives of the majority of its employees was based upon a series of findings: that at the time of the shut-down of respondent's plant on August 21, 1935, there was nothing to indicate that a permanent impasse in the negotiations had been reached (R. 37); that thereafter conditions changed and new issues arose, so that there appeared a reasonable likelihood that

further negotiations would resolve the dispute (R. 37-38); that nevertheless respondent abruptly terminated its negotiations with the M. E. S. A. committee and negotiated a contract with another labor organization (R. 32, 37); and that respondent refused a request on behalf of the M. E. S. A. committee for a meeting with it (R. 33-34, 38) although that committee was then the exclusive representative of respondent's employees (R. 29, 30, 36-37). The court below, apparently basing its decision partly on a refusal to accept the findings of the Board that further conferences might be expected to resolve the dispute and partly on its holding that the employees had breached the contract of June 15, 1935, decided that respondent had not been guilty of a violation of Section 8 (5). It therefore refused to enforce the portion of the Board's order based upon that violation.

We submit that the court below was in error in each of its premises and in its conclusion. In Part A, *infra*, we will show that there is adequate evidence to support the finding of the Board that respondent's obligation to bargain had not been discharged. In Part B, *infra*, we will show that, no matter how it be viewed, the contract of June 15, 1935, is irrelevant to the duties of respondent under Section 8 (5).

A. RESPONDENT'S OBLIGATION TO BARGAIN COLLECTIVELY WITH
THE M. E. S. A. COMMITTEE HAD NOT BEEN SATISFIED BY THE
CONFERENCES PRIOR TO AUGUST 21

Under Section 8 (5) of the National Labor Relations Act, *infra*, p. 54, an employer is obligated to "bargain collectively with the representatives of his employees * * *" The statute does not define the extent of the obligation; indeed, no precise statement is possible. The policy of Congress, however, not only in this but also in other statutes, is to make of collective bargaining an effective "instrument of peace" in the settlement of labor disputes, *Texas & New Orleans R. Co. v. Brotherhood of Railway Clerks*, 281 U. S. 548, 570, by imposing upon employers an obligation to make a "reasonable effort to compose differences." *Virginian Ry. Co. v. System Federation No. 40*, 300 U. S. 515, 548. With the sole qualification that no agreement is compelled (*National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45) there can be no doubt that the duty to bargain collectively imposed by Section 8 (5) is commensurate with the opportunities for a successful termination of the dispute. *Jeffery-De Witt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731; *National Labor Relations Board v. Biles Coleman Lumber Co.*, 98 F. (2d) 18 (C. C. A. 9th); *National Labor Relations Board v. Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, No. 907, May

23, 1938; *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d), certiorari denied, No. 970, May 23, 1938.

In the present case the Board, upon a full review of the evidence, found as a fact that upon certain issues the respondent failed in its obligation to bargain collectively with the M. E. S. A. committee. On the evidence in the record it is clear not only that the Board's finding was supported by evidence but also that no other conclusion was possible.

A brief statement of the events preceding the temporary shutdown on August 21, 1935, will clarify the subsequent discussion. During June and July the orders which had accumulated during the strikes in May and June had been largely filled. During July respondent had reduced its working force by laying off all the "new" men who had been taken on because of the accumulated business (R. 30; 220-222, 516-517). By August 2 respondent had put the remaining "old" men on a schedule of three days a week (R. 30; 428-429, 554-555). Some departments were closed down completely (R. 30-31; 365-366, 514, 574).

At about this time respondent decided that for business reasons the whole plant should be temporarily shut down, except that the machine shop should be run with an increased force in order to prepare stock in anticipation of a reopening (R. 31; 279-280, 375, 470, 517). The seniority prob-

lem raised by that decision was the subject of numerous conferences between the M. E. S. A. committee and respondent's officers (R. 31; 286, 371-372). The former desired that the additional men whom respondent proposed to add to the machine shop force should be selected from qualified "old" men regularly employed in other departments which were to be closed down (R. 31; 289-290, 367-368, 372-373, 385, 573-582). Respondent insisted that the additional men be recruited from "new" men formerly employed in the machine shop, but who had been laid off previously (R. 31; 417-418, 427, 515, 517). The discussions had on this question, and the arguments advanced by each side, were limited to the inquiry as to which position constituted the proper construction of the agreement which had been signed by the M. E. S. A. committee and respondent on June 15, 1935 (R. 600-602).

Finally, at a meeting on August 19, Garry Sands, respondent's secretary-treasurer, gave the committee alternatives which he asked them to submit to the men: either a consent to the operation of the machine shop with "new" men and the temporary shut-down of the other departments—i. e., acquiescence in respondent's contentions, or a temporary complete shutdown of the whole plant (R. 31-32).⁴

⁴ The Board found that Garry Sands proposed the alternatives of laying off the "old" employees and increased operation of the machine shop with "new" employees or a temporary shut-down of the entire plant (R. 31-32). That finding, which is based upon the testimony of members of

The committee did as requested, and found that the men preferred the latter course. At a meeting on August 21 they told respondent of the men's decision. Consequently, on that day the management posted a notice on the time clock as follows (R. 32, 351):

The factory will shut down Wednesday night, August 21st, until further notice.⁵

Since that time, respondent has not met or bargained with the M. E. S. A. committee—a course of conduct approved by the court below (R. 613). We submit, on the contrary, that on at least three separate matters respondent was plainly obligated to bargain further.

1. The agreement reached on August 21, 1935, that the plant shut down “until further notice” (R. 351) was recognized by both parties as a compromise by which the dispute as to the shifting of “old” men to the machine shop could be at least temporarily resolved, and perhaps permanently eliminated. The record is clear that both the committee and respondent's officers recognized that if the plant was temporarily closed, enough orders would accumulate so that in a few weeks the plant

the M. E. S. A. committee (R. 375-377, 572) was not disturbed by the court below (R. 609). Respondent's witnesses agreed that these were the alternatives, but they stated that the proposal was first advanced by the committee (R. 431-433, 519-520, 555-560).

⁵ The record at p. 32 erroneously states that date as August 31. It is stated correctly in the stipulation entered into by the parties (R. 351).

could resume full operations with the "old" men in their regular departments. No one believed that a permanent impasse had been reached.

Pansky, a member of the M. E. S. A. committee, testified that at the conference on August 19 Garry Sands stated that if respondent's suggestions as to the addition of "new" men in the machine shop were not acceptable to the men "maybe we will shut down the factory for a week or two until some work comes, some orders comes in" (R. 376-377). This is corroborated by Jindra, another committeeman, who quoted Sands as stating that the plant would have to "shut up for two weeks" (R. 572). Sands denied saying anything about closing the plant for a week or two, but testified that he directed the committee to consult the men "and see if they have any suggestions to offer and what we can do about it," and that the committee returned on August 21 and asked that the plant be shut down "until you get busy so as to take back all the old men" (R. 519-520, 553, 556). The notice itself, posted at Sands' direction, stated that the closing was simply "until further notice" (R. 32; 351, 620).

Consequently, the statement of the court below that "Respondent was not obligated to prolong the impasse" (R. 613) is based upon a serious misapprehension of the facts. Actually, respondent and the committee had agreed to a device whereby further conferences on the issue upon which they were in conflict could be postponed, at least, and, if busi-

ness improved so that the whole plant could be kept running, could be completely eliminated. Nothing in the situation as it existed on August 21 indicated that respondent would not bargain further on that issue if and when it arose again. The issue had simply been avoided by the device of the temporary shut-down. The abrupt decision of respondent not to bargain further, reached and acted upon without even a notice to the committee with which it had been bargaining, is simply a unilateral termination of negotiations at a point at which there was every reason to believe that the passage of time would make the whole issue moot. Certainly Section 8 (5) cannot mean that because it took many conferences, a direct clash of opinion, and a closing of the plant, in order to arrive at a solution, the fact of the solution can for that reason be ignored by one of the parties. In the opinion of the court, the Board "gives overemphasis to the events which occurred after August 21, 1935" (R. 613). Actually, we submit that in view of the understanding which was arrived at on August 21, the numerous conferences and other events prior to that date, except in so far as they explain the issues, are almost completely irrelevant.

2. But aside from this, and even on the assumption that an impasse had been reached on August 21 with respect to the rights of the parties under the contract of June 15, the understanding arrived at on that day, and the events which occurred later, brought forward new issues apart from those aris-

ing under the contract as to which respondent was under obligation to negotiate. Whatever else was intended by the understanding of August 21, it cannot be disputed that the closing of the plant on that date was to be for only a temporary period until sufficient orders accumulated to warrant taking back all the "old" men in their own departments. As already pointed out (*supra*, pp. 20-21), both parties so understood the situation when the plant was shut down. The failure of respondent to abide by this understanding, by the reopening of its plant without the M. E. S. A. men, therefore, created a new issue more immediate and more vital to the employment relation of the parties than anything that had gone before.

Indeed, it would be no answer to suggest that respondent had not violated any agreement of August 21—that there was no agreement, or that if one did exist, it was not that which is here suggested. Irrespective of either of those considerations, it is plain from the testimony of Garry Sands (R. 556) that respondent knew that the committee understood the shutdown as a solution of the problem, and as a plan whereby they would all eventually come back to work. Under those circumstances, it seems plain that respondent could not, consistently with Section 8 (5) of the Act, abruptly and without conference, take final action inconsistent with the known understanding of the men. Respondent, of course, might have adhered

MICROO

TRADE M



MICROO EDITION

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICRO
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20001

4

2

CARD
ARK **®**

22

CARD
S, INC.

ROCARD AND MICROFICHES

37, PHONE (202) 333-6393

w
oo
-
9
9

m
microcard[®]

to its original decision after collective bargaining; but by the plain requirements of the Act it could not make that decision without collective bargaining on this new issue which it had raised.

3. Finally, immediately after August 21 respondent itself brought sharply to the foreground an issue upon which, although it was basic to the whole dispute, there had not theretofore been any bargaining. Prior to August 21 the conferences had been directed exclusively to an attempt to resolve conflicting interpretations of the June 15 contract in so far as it did or did not limit respondent's right to hire "new" men in the machine shop without regard to the seniority status of "old" men made idle by shut-downs in other departments (R. 286, 376, 518-519). As Garry Sands stated (R. 518) "every meeting was concentrated on" the matter of departmental operation. In fact, however, as the Board found (R. 36), the real and fundamental objective of respondent's insistence upon the right to hire "new" men was to secure a reduction in wage costs.* Wage rates

*The court below ignored this finding and accepted respondent's contention that its objection to the transfer of "old" men was based on the inefficiency of employees so transferred (R. 611-612). The finding of the Board was, however, amply supported. Employees had been transferred from one department to another over a period of years (R. 383-384, 479, 489, 495, 515, 519, 562-563, 568, 581), but respondent failed to introduce any testimony showing that any particular man proved inefficient in the department to which he was transferred. No complaint because of in-

were determined wholly by length of service; hence "new" men would receive a lower wage than that which respondent would be obliged to pay "old" employees transferred from other departments (R. 372-373, 375-376, 572). Indeed, the testimony of respondent's officials makes it clear that reduction in wage rates, concomitantly effecting a reduction of operating losses, was the underlying source of the whole dispute (R. 430-432, 470-471, 522-523, 572).

Neither party, however, attempted to resolve the dispute on this basis. Garry Sands testified that at the conference on August 19, 1935, "wage rates were not discussed" (R. 554). This possible basis for settlement was obscured throughout the negotiations had up to August 21, on the one hand, by the claim that the committee's stand was in breach of the contract (R. 519), and on the other hand by the contention that the transfer of men from one department to the other was inefficient (R. 412, 432, 520-521).⁷ The wage issue clearly was more funda-

efficiency was ever registered against any of the men when they were transferred to work in other departments, including the machine shop (R. 185, 319-321, 327, 347, 385, 568). In some cases the old men when transferred were more efficient than the new (R. 561, 563). Indeed, at a meeting of the employees in March 1935 Garry Sands plainly indicated that it was not difficult to adapt men to do satisfactory machine shop work by pointing out the speed and ease with which he had broken in many new employees to the work in the machine shop in 1934 (R. 552).

⁷ See footnote 6, *supra*.

mental than either. Not until it had been explored with the committee could it properly be said that further negotiations would be fruitless.

But it was not until after August 21 that that issue for the first time came to the front. Shortly after that date Garry Sands, in a conversation with Farrell, one of the "old" employees, explained that the shut-down of August 21 was an economy move, and voiced to Farrell the belief that the men "might be better off if they worked for a little less wages and more steady employment" (R. 315-316, 318-320, 442-443, 522-523). This proposition was specifically offered to at least three "old" men as a condition of employment (R. 329-330, 343-344, 354, 591), as respondent's witnesses themselves admitted (R. 432-433, 445-447, 449-450, 525). That it was not offered to more of the M. E. S. A. men does not weaken the effect of the offers as corroborative of the evidence, furnished by the remarks to Farrell, that it was not until after the shut-down that the real issue came to light.

With the issue out in the open, of course, a situation was presented in which negotiations might proceed. Indeed, Farrell himself pointed out to Garry Sands that "if he did talk to the committee they would agree to take a cut" (R. 316).

It cannot be urged that the new issues presented by the agreement of August 21, and by the suggestion of a modification of wage rates, were *subsequent* to the suspension of negotiations on

August 21 and therefore irrelevant. The obligation to bargain collectively clearly extends to matters which come to light or are created subsequent to a temporary suspension of negotiations. *Jeffery-De Witt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), is directly in point. There almost a month after negotiations had reached an impasse, two conciliators who had been instrumental in settling previous strikes offered to mediate. The company refused to reopen the negotiations. The Board found the refusal to be a violation of Section 8 (5), and its order was enforced by the Circuit Court of Appeals. The court stated (91 F. (2d) at p. 139):

The company's second contention is that it was not guilty of an unfair labor practice in refusing to bargain with the union on and after July 15th, for the reason that efforts to bargain with it prior to June 20th had resulted in failure and an impasse in the negotiations had been reached. The answer to this is that nearly a month of "cooling time" had elapsed since the negotiations of June 15th to 20th, the status of the controversy had undergone considerable change as a result of the operation of the plant, the striking employees after nearly a month of idleness were doubtless willing to make concessions to compromise the matters in difference, and conciliators had arrived upon the scene for the purpose of trying to secure an adjustment.

We submit, therefore, that the record compels the conclusion of the Board that respondent's obligation under Section 8 (5) to bargain collectively with the M. E. S. A. committee had not been carried out. The dispute upon which numerous conferences had been held—the proper interpretation of the contract of June 15—had been resolved by the temporary shut-down. The failure of respondent to abide by the agreement of August 21 created a new issue which could not be resolved by the unilateral, unannounced action of respondent. The wage issue, which was fundamental, had not been explored at all, and had come definitely to the front as a new basis of solution.

In any event, there can be no possible doubt that there was adequate evidence to support the finding of the Board that upon several issues further collective bargaining might reasonably be expected to result in an amicable settlement of the questions at issue between the respondent and its M. E. S. A. employees. The matter is plainly one of fact (*Jeffery-De Witt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134, 139–140 (C. C. A. 4th), certiorari denied, 302 U. S. 731), upon which the finding of the Board, if supported by evidence, is conclusive. Section 10 (e); *Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board*, 301 U. S. 142, 147; *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 270, 271.

**B. THE CONTRACT OF JUNE 15, 1935, IS IRRELEVANT TO
RESPONDENT'S OBLIGATION UNDER SECTION 8 (5)**

The holding of the court below that respondent had not violated Section 8 (5) of the Act is also based upon the ground that the terms of the contract of June 15, 1935, limited the obligation to bargain collectively which would otherwise have existed. Although the rationale of the decision is by no means clear, there seems to be a combination of two arguments: (1) that if respondent's interpretation of the contract were correct, and that of the committee erroneous, respondent was under no obligation to bargain further on that issue (R. 613), and (2) that if the employees had violated the contract, respondent could, and did, abrogate the contract, sever the employer-employee relationship, and thereby relieve itself of any obligation whatsoever to bargain with the M. E. S. A. committee (R. 610). Both arguments are, we submit, without merit.

The correct interpretation of the contract of June 15 is irrelevant to respondent's failure to bargain collectively

The court below discussed at some length the proper meaning of the contract of June 15, 1935 (R. 611-613), and finally resolved the question of interpretation in favor of respondent. We believe, as we have indicated in the footnote,⁸ that the con-

⁸ The contract of June 15 provided, *inter alia* (R. 600):

(5) That when employees are laid off seniority rights shall rule, and by departments.

(6) That when one department is shut down men from this department will not be transferred on work

struction adopted by the court was incorrect. At least, there is much to be said on both sides of that question—certainly enough to warrant the finding by the Board that there was an “honest difference

in other departments until all old men only within that department who were laid off have been called back.

(7) That all new employees be laid off before any old employees in order to guarantee, if possible, at least one week's full time before the working week is reduced to three days.

Respondent claimed that under these provisions seniority rights applied only by departments, basing its position chiefly upon the fact that in paragraph (5) it had caused to be added the words “and by departments,” and in paragraph (6) the word “only” to the form of contract first submitted by the M. E. S. A. (R. 160, 277, 289, 600, 603). But the addition of these words did not change the substance of the agreement from that of the 1934 contract (R. 598), under which “old” men were transferred from one department to another before any “new” men were taken on (R. 383-384, 495, 515, 519, 568, 581). But even aside from this fact, paragraph (7), it is to be noted, is not restricted to departments, and, in providing that “*all* new employees be laid off before *any* old employees” it discloses an intention that “old” men be given preference over “new” generally and without regard to departmental seniority. As late as July 30, 1935, respondent adopted that construction of paragraph (7) in laying off all “new” employees, including those in the machine shop. (R. 580). Moreover, paragraphs (5) and (7) deal only with seniority as respects the *lay-off* of men, not in *hiring*, the problem raised by respondent's desire to *increase* the machine shop force. Under the most likely construction, therefore, these provisions did not cover the matter in dispute at all. Paragraph (6), which does apply to hiring, makes it plain that the contract was not intended to abolish the transfer system. That paragraph clearly provides for the continuance of inter-departmental transfers, provided only that no transfer be made to the position of any “old” men then laid off from the department to which the transfer was contemplated.

of opinion" on the correct meaning of the contract (R. 36). We also believe, however, that that question has been unduly magnified. Actually, the obligation of respondent under Section 8 (5) is unaffected by the contract no matter how it be interpreted.

In the first place, as we have pointed out above (pp. 22-26), respondent was obligated to bargain collectively after August 21 on two matters which were completely distinct from the issue as to the construction of the contract. Plainly, the position of employees on one question, whether it be contracts, wages, or anything else, and whether it ultimately be adjudged right or wrong, cannot affect the obligation of the employer to bargain collectively on *other* questions which may entirely resolve the dispute. Hence the proper interpretation of the contract is completely irrelevant to the violation of Section 8 (5) arising from respondent's failure to bargain collectively with respect to its unilateral breach of the agreement for a temporary shut-down on August 21, and with respect to the wage issue.

In the second place, even on the issue as to the proper interpretation of the contract, the merits of the dispute cannot affect the extent of respondent's obligation. Collective bargaining may properly deal with a change in an existing contract. The obligation imposed by Section 8 (5) is obviously not conditioned upon a finding that conditions be left undisturbed. The purpose of the Act is to

encourage the procedure of collective bargaining for the settlement of *all* differences, without regard to either the merits of the respective positions of the disputants or the fact that one party may believe that the issue is already covered by an agreement.

Finally, although the court below appears to have assumed to the contrary (R. 610), no *breach* of the contract had occurred, no matter what its proper construction may have been. A breach could occur only if one of the parties had taken some definitive step. Had respondent hired "new" men for the machine shop, it probably would have breached the contract if its construction were incorrect. Had the employees refused to work, they probably would have breached the contract if their interpretation were erroneous.⁹ In fact, therefore, respondent was no more justified in refusing to bargain collectively with the M. E. S. A. committee on the contract issue after August 21 than it would have been had it refused when the controversy first arose several weeks before.

⁹ The employees did not refuse to work on August 21. The Board found (R. 31-32) that the suggestion that the plant be temporarily closed if the employees would not acquiesce in respondent's interpretation of the contract of June 15 was proposed by Garry Sands—a finding that was amply supported by evidence (R. 375-377, 572). The court below did not disturb this finding (R. 609). There is no evidence that the men refused or threatened to refuse to work unless their view of the contract were accepted by respondent.

2. *The dispute over the proper interpretation of the contract did not abrogate the contract or sever the employer-employee relationship*

The court below also seems to have held that if the employees had breached the contract, respondent could, and did, abrogate the contract, sever the employer-employee relationship, and thereby relieve itself of any further obligation to bargain with the M. E. S. A. committee (R. 610). We have already pointed out (pp. 29-30, 32, *supra*) that the premise upon which the court proceeded was erroneous, since there had in fact been no breach of the contract by the employees. But we need not rely on that, nor need we discuss whether an employer may discharge employees who disagree with him on the interpretation of a collective bargaining contract. In the present case it is clear that respondent did not discharge the M. E. S. A. men at a time when ~~before~~ it was under no obligation to resume negotiations with them.

The first question, of course, is *when* the obligation to bargain arose. The court below seems to have assumed that no obligation existed until the plant reopened on September 3 and Potter, on September 4, called Garry Sands and requested a conference on behalf of the M. E. S. A. committee.¹⁰ Even on that assumption, the court was clearly in

¹⁰ The Board found, on conflicting evidence, that on the day after the plant reopened on September 3 Potter called Garry Sands on the telephone and asked for a meeting (R. 33-34). Potter testified that he requested a conference

error in assuming that the M. E. S. A. men were no longer employees when the request was made. In addition to that fact, however, there was a plain violation of Section 8 (5) on August 26 and 27, at a date when there can be no doubt that the M. E. S. A. men still retained their employee status.

We have already pointed out, *supra*, pp. 20-21, that the evidence is clear and convincing that when the plant was closed on August 21 the men were simply laid off temporarily, subject to being recalled to work at any time. Obviously, they continued as employees until some change was made in their status. The record not only contains evidence which indicates that the men remained simply laid off, rather than discharged, until at least September 4, but also is barren of any evidence of an attempt by respondent to change their status before that time.

Several of the M. E. S. A. men continued to work at respondent's request after August 21. Rudd, a foreman and one of the men later discharged, was called back and worked at the plant on August 26, 27, and 28; several other people were also working there at that time (R. 222-223). Tulow, another foreman, worked on August 30

(R. 134-135) and Pansky testified that he heard Potter make the request (R. 570). Sands admitted that Potter had called, but denied that he was asked to meet with anyone (R. 530). The Board was clearly entitled to refuse to credit his denial. The finding was not disturbed by the court below.

When he was laid off he asked Garry Sands when the plant would reopen, and was told that it was impossible to say (R. 325). Pansky, who also worked on August 30 (R. 353) making a special order (R. 377-378), stated that some men had been working right along (R. 379). Yet none of these men, each of whom spoke to the officers of respondent while they were working at the plant after August 21, were given any intimation that they had been or were to be discharged. Moreover, respondent itself urged, before the Board, that the M. E. S. A. men were not discharged until new men were hired to take their places (R. 94), which would mean that about 10 were discharged when the plant opened on September 3 (R. 450)—still leaving the M. E. S. A. members the great majority of respondent's employees—and the rest from time to time thereafter until the plant was running with a full complement of men sometime in October (R. 535). In addition, the lists of employees posted in the plant were not removed until after September 3 (R. 434). Finally, Rudd worked for respondent even after the plant had opened on September 3, and was specifically discharged by Garry Sands on September 4 (R. 215, 521-522). The inference is plain that he had not been discharged theretofore.

Nor is there any evidence in the record to the contrary. It is a familiar legal principle that in order to effectuate a discharge, the fact of the dis-

charge must be communicated to the employee or the employer must take such action to the employee's knowledge as is inconsistent with the continuance of the employment relationship, and this is so whether the employment is at will or for term. *Semet-Solway Co. v. Wilcox*, 143 Fed. 83 (C. C. A. 3d); *Percival v. National Drama Corp.* 181 Cal. 631; *Louisville & Nashville R. R. Co. v. Harvey*, 15 Ky. L. R. 809; *Jewel Tea Co. v. Himelstein*, 164 Wis. 325. Consequently, even if respondent's officers had decided upon a discharge sometime prior to September 4, it was ineffective for all purposes until communicated to the employees.¹¹

Respondent's first attempt to discharge the men seems to have occurred when Garry Sand told Potter, in response to the request for a conference, that the M. E. S. A. men had been discharged. At that time, however, there was a demand for a meeting. Respondent's refusal was therefore, a violation of Section 8 (5). We submit therefore, that even on the assumption that the obligation to bargain first arose on September 4, the M. E. S. A. committee was still the representative of the majority of respondent's employees.

¹¹ Of course, a matter so peculiarly within the knowledge of respondent's officers should certainly have been testified to by them. In the absence of such testimony, it must be assumed that no intention to effect a discharge actually existed.

In any event, it is plain that respondent had violated Section 8 (5) prior to that date. On August 26, Garry and Hilliard Sands, two of respondent's officers, met with representatives of the International Association of Machinists, affiliated with the American Federation of Labor, for the purpose of negotiating a collective labor contract (R. 451-452, 547-548). On the following day the contract was signed by both parties, to become effective on September 3 (R. 452). Plainly, by those acts, respondent had violated Section 8 (5) of the Act.

At the time these negotiations were begun there can be no doubt that the M. E. S. A. men had not been discharged, since nothing had occurred to change their status as laid-off employees. Nor can there be any doubt that the obligation imposed upon an employer by Section 8 (5) of the Act to bargain collectively with the representative of the majority is violated by the action of an employer who bargains collectively with anyone else. In *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, this Court reviewed at length its decision in *Virginian Railway Co. v. System Federation No. 40*, 300 U. S. 515, and stated (301 U. S. 44-45):

We said that the obligation to treat with the true representative was exclusive and hence imposed the negative duty to treat with no other. * * * We think this con-

struction also applies to § 9 (a) of the National Labor Relations Act.

Indeed, a realistic appraisal of the conduct of respondent could leave no doubt that its collective bargaining with the Machinists was tantamount to a plain refusal to bargain with the M. E. S. A. Respondent does not, and could not, deny that fact. The Board has held that an employer violates Section 8 (5) when he bargains collectively with an organization other than the one representing a majority of the employees. *National Motor Bearing Co.*, 5 N. L. R. B. 409; *Zenite Metal Corp.*, 5 N. L. R. B. 509. See also *Virginian Ry. Co. v. System Federation No. 40*, *supra*, at 548-549; Hearings on Senate Bill No. 1958, 74th Cong., 1st Sess., Pt. 1, p. 43.¹²

Nor is it material that no request was made by the M. E. S. A. committee for a meeting with respondent at that time. No request was possible—the M. E. S. A. committee did not know that respondent was negotiating with another organization. Obviously, a request would have been made had the committee known that respondent was con-

¹² The action of respondent in bargaining with the Machinists is also, of course, a violation of Section 8 (1) of the Act, the provision which forbids any conduct by an employer which operates to "interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7." Certainly an employer who bargains with representatives of other than the majority of his employees impairs the rights guaranteed by Section 7, if for no other reason than that his conduct weakens the effective action of the representatives chosen by the majority.

templating not only a departure from the understanding of August 21, but also the discharge of all the M. E. S. A. employees. Indeed, such a request was promptly made when respondent's intention first came to light. Moreover, the policy of Congress, clearly expressed in the Act, is that collective bargaining should be fully and fairly had on issues which might otherwise burden commerce by industrial unrest or strife, in order that, so far as possible, such unrest or strife may be eliminated. That policy is, *pro tanto*, frustrated if an employer may take action which he realizes is likely to result in industrial strife without first meeting with the representatives of his employees in an effort to arrive at an amicable understanding. Particularly is this so when, as here, the employees have representatives with whom the employer is well acquainted, and with whom he has been in frequent consultations in the past. The old National Labor Relations Board set up under Pub. Res. No. 44, 73d Cong., specifically held that an employer is obligated to initiate collective bargaining upon issues about which it knows the employees must desire to negotiate. *Matter of Chicago Defender, Inc.*, 1 N. L. R. B. (old) 119. That decision clearly expresses the intent of Congress under the present Act.

One final factor should be mentioned. If, as we point out in Point II, *infra*, pp. 40-49, the employees were discharged because of their membership in the M. E. S. A. in violation of Section 8 (3)

of the Act—the discharge could not, no matter when attempted, sever the employer-employee status for the purposes of the Act. By the plain terms of Section 2 (3) of the Act, they remained “employees,” since their work ceased “because of [an] unfair labor practice.”¹³ If, therefore, we are correct in Point II, there can be no question under Point I except as to the issues dealt with in Part A, *supra*, pp. 17–28.

We submit, therefore, that respondent has failed to bargain collectively in violation of Section 8 (5) of the Act, and that the decision of the court below to the contrary should be reversed.

II

THE EVIDENCE FULLY SUPPORTS THE BOARD'S FINDING THAT RESPONDENT HAD FAILED TO REINSTATE EMPLOYEES BECAUSE OF THEIR MEMBERSHIP IN THE M. E. S. A. IN VIOLATION OF SECTION 8 (3) OF THE ACT

The Board, upon a full review of the evidence, found as a fact that “the old employees were locked out, discharged, and refused reemployment because they were members of the Mechanics Edu-

¹³ The suggestion by the court below (R. 613) that the layoff of August 21 was “equivalent to a strike” does not help respondent. The statement ignores the finding of the Board that the shut-down was suggested by respondent. See footnote 4, p. 19, *supra*. Moreover, even if the statement were true, such a “strike” would not sever the employer-employee relationship. *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333.

ational Society of America and had engaged in concerted activity for the purpose of collective bargaining" (R. 38-39). The court below stated: "In this case no evidence appears that the employees were discharged because of their membership in the M. E. S. A. or any union" (R. 613), and refused enforcement to those portions of the Board's order based upon a violation of Section 8 (3). We submit that the finding of the Board is supported by ample affirmative evidence which is further buttressed by ^{the} fact that the reasons for the discharge suggested by respondent and the court below are flatly contradicted by admitted facts.

The primary fact in this branch of the case is the complete elimination by respondent of all of its M. E. S. A. employees, a fact which is not denied. When the plant reopened on September 3, 1935, respondent called back to work only those of its former employees who were members of the Machinists union, and recruited its additional help through the Machinists and from the county relief rolls (R. 198-200, 452-453). This peremptory elimination of all of its M. E. S. A. employees, without any notification to them of any kind (R. 169, 186, 206-207, 452-453), plainly shows respondent's intention to rid itself of the M. E. S. A. employees. This fact alone, taken in conjunction with the complete breakdown of all of respondent's attempts to explain it (*infra*, pp. 44-46), leads irre-

sistibly to the conclusion of the Board that M. E. S. A. men were eliminated because of membership in that organization. There is, moreover, much more evidence which corroborates conclusion.

The record reveals that respondent had been hostile toward the M. E. S. A. and friendly toward the Machinists following the strikes of May and June 1935. Hilliard Sands, respondent's superintendent, admitted that he told Rudd, an M. E. S. member, that he preferred the Machinists because they were "a more conservative union" (R. 421) and that they "were more apt to arbitrate with management before they walked out on strike" (R. 421).

McKiernan, the assistant superintendent, apparently shared the feeling. He told Norman, an M. E. S. A. member who had been discharged and was seeking reinstatement (R. 303):

"* * * Well, Jack," he said, "I will get you; there is a lot more of this than you know of." I said, "How?" just like that. He said, "Don't worry, Jack, I will get you back. I will get you back when we build this union up"; and I said to him, "You wouldn't want to come back then." That was all I said.¹⁴

The evidence of the hostility of Garry Sands, respondent's secretary-treasurer and active in charge of its labor policy, is even clearer. Prior

¹⁴ McKiernan denied the statement (R. 504), but the Board believed it to be true (R. 38).

the reopening of the plant Garry Sands called in four of the M. E. S. A. employees and advised them that they were the only ones whom respondent proposed to take back (R. 448-449, 542-544). However, as respects two of the men, Linski and Pansky, the offer was made upon the condition that they drop their affiliation with the M. E. S. A. and join the Machinists (R. 341, 345, 354-356). Sands denied that he so conditioned the offer, but he did admit that he obtained a Machinist's application card for one of the men (R. 489, 493) and that he stressed the provisions of the Machinists' agreement which provided wage increases for its members (R. 527-528). Farrell, a M. E. S. A. member, testified that Sands intimated to him that the M. E. S. A. was trying to "break" him (R. 316). Sands himself related the following conversation with Hudak, another M. E. S. A. member who sought reemployment after the plant reopened (R. 529):

Oh then, when I told him I couldn't give him a job, he started to plead with me and he said, "Now, Mr. Sands, you know I am an old man, an old friend of yours, and I tried to work for you to help you." I said, "That is fine, Mike." I said, "Didn't I see you out picketing the plant on September 3rd?" He said, "Yes." I said, "Then are you such a friend of mine that you have to picket?" He didn't know what to say. I said, "Well, Mike, you know the M. E. S. A. has filed a

complaint against us and we don't need any men now. Our plant is all filled up now." I said, "You wait until after the hearing which is going to come up very shortly." And that is the reference to the M. E. S. A. between us.

Indeed, the whole of Garry Sands' testimony is pregnant with lack of understanding of, and hostility to, an employer's obligations under the Act (*E. g.*, R. 515-517, 529, 540-541).

The conclusion of the Board is fortified, rather than weakened, by the various explanations advanced by respondent for the mass lock-out of the M. E. S. A. men. The first explanation, which was apparently accepted by the court below after it had found that "no evidence appeared" (R. 613) in support of the Board's finding, was that the men had breached the contract, and had been discharged for that reason (R. 614). The explanation is directly contrary to the fact that respondent sought to reemploy at least four of the "contract-breakers" (p. 43, *supra*)—some of them members of the M. E. S. A. committee who were probably peculiarly "guilty" of this offense. Under those circumstances it is unlikely that the respondent really did not wish to have alleged "contract-breakers" in its employ. Moreover, it is to be noted that the new agreement with the Machinists contained a seniority provision which is very similar to the position on that question taken by the M. E. S. A. men in their conferences (R. 588). The issues about which the

conferences with the M. E. S. A. had centered apparently were not important in respondent's own estimation—certainly not enough so to warrant a lock-out of every M. E. S. A. member.

The second explanation suggested by respondent is that the M. E. S. A. employees were too highly paid, and that it had to reduce expenses. The suggestion, of course, immediately raises the question discussed in Point I, why respondent never brought up the wage rates as a subject of negotiation. Certainly if this were the true basis for the discharge, there was a plain obligation upon respondent under Section 8 (5) of the Act to discuss a wage rate reduction with the M. E. S. A. men before eliminating them suddenly, and without warning.

Apart from that fact, however, it is apparent that the wage scale of the M. E. S. A. men was not the reason for their mass elimination. Included among the 47 M. E. S. A. members not recalled to work were 25 "new" employees (R. 558-560, 597). Their wages were the same as those of the Machinists who were recalled (R. 373, 375, 590). Assuming, therefore, that respondent could, consistently with its obligations under the Act, replace its employees because their wages were too high without affording them an opportunity to agree to a reduction, the evidence in this case is compelling that membership in the M. E. S. A., and not status as highly-paid employees, was the reason for the lock-out.

Finally, respondent suggests that none of the M. E. S. A. members applied for reinstatement until all of their places were filled (R. 535). Certainly, however, no formal application was necessary when the bulletin of August 21, closing the plant, stated that they would receive "further notice" (R. 351), which respondent had always given before after a temporary lay-off (R. 169, 186, 198, 199, 206-207). The men were given every reason to believe that they would be notified to return to their jobs. Moreover, some places were filled by respondent prior to the date of the reopening (R. 452-453), before the M. E. S. A. members knew their positions were being filled, and before they had any opportunity to apply for them. In any event, by respondent's own admission (R. 448, 449, 542, 544) it was so clear that respondent would not take on any of the M. E. S. A. men that formal application would have been a vain thing (R. 175, 176).

Upon this review of both the affirmative evidence and of respondent's proffered explanations, we submit that the court below was plainly wrong in holding that there was "no evidence" to support the finding of the Board. As this Court has had occasion to remark, the court below "though professing adherence" to the mandate of Section 10 (e) of the Act that the findings of the Board as to the facts if supported by evidence, shall be conclusive

"honored it * * * with lip service only."
Federal Trade Commission v. Algoma Lumber Co.,
 291 U. S. 67, 73.

A similar comment is applicable to Point I, *supra*. As was there pointed out, whether respondent had violated its obligations to bargain collectively depends on questions of fact: the character and results of the original dispute and negotiations; the purpose and effect of the agreement for the temporary closing of the plant as a solution of the dispute as it then existed; and the altered character of the dispute after August 21. Judgment upon those facts, as well as upon the ultimate factual question whether, under all the circumstances, the dispute held forth the reasonable likelihood of peaceful settlement which is the basic objective of the statute, was of the very essence of the function of the Board to find the facts (*Jeffery-DcWitt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731)—a function the proper exercise of which in the present case was overturned by the Court below in derogation of the plain provisions of the statute.

The importance of this question transcends its application in the case at bar. The problem is general, affecting the whole administration and enforcement of the statute. In many cases the Circuit Courts of Appeals have shown clearly an

observance of the mandate of Section 10 (e) of the Act, and a purpose to adhere to the line of demarcation drawn by this provision between the functions and those of the Board. There are, however, a number of decisions which indicate a contrary tendency. If that tendency continues, the Government must either acquiesce in a method of future administration and enforcement of the Act which follows a route contrary to the terms of the statute, or press upon this court petitions to revise decisions of the Circuit Court of Appeals in which evidentiary questions are controlling or important. The Government respectfully suggests that the proper judicial enforcement of the statute depends upon a clear understanding by the lower courts of the applicable principles here discussed. Cf. *Federal Trade Commission v. Pacific States Paper Trade Ass'n*, 273 U. S. 52; *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67; *Vecchio v. Bowers*, 296 U. S. 280; *Federal Trade Commission v. Standard Education Society*, 300 U. S. 112; *Swayne & Hoyt, Ltd. v. United States*, 300 U. S. 297. Under those principles the appraisal of evidence in proceedings under the Act and the necessary application of the inferential process, is a function of the Board as the specialized administrative agency familiar with the facts and situations and technical problems of the particular field being regulated, and its judgment as to the facts should be final where not unreasonable. *Swayne & Hoyt, Ltd. v. United States*, *supra*.

United States Navigation Co. v. Cunard S. S. Co., 284 U. S. 474, 481-482. Only if those principles are fully accepted can enforcement of the statute be had as Congress intended.

In the earlier years of the operation of the statute it has been necessary and desirable that much litigation should be had to obtain judicial determination of many important questions. The need for that considerable litigation may be expected to diminish. It would be highly undesirable if petitions of an equivalent volume were to be occasioned by the failure of the Circuit Courts of Appeals to give to the findings of the Board the effect which the statute requires.

III

RESPONDENT'S OFFER OF REINSTATEMENT TO CERTAIN OF ITS M. E. S. A. EMPLOYEES UPON CONDITION THAT THEY JOIN THE MACHINISTS WAS IN VIOLATION OF THE ACT

Under Point II (*supra*, p. 43) we have already referred to the offer made by Garry Sands to reinstate two men, Linski and Pansky, both members of the M. E. S. A., upon condition that they join the Machinists. On these facts the Board concluded (R. 32-33, 39, 40-41) that respondent had violated Section 8 (3) of the Act. That section makes it an unfair labor practice for an employer—

By discrimination in regard to hire or tenure of employment or any term or con-

*dition of employment to encourage or discourage membership in any labor organization: * * ** [Italics supplied.]

The court below did not question, as it could not upon the evidence, that "respondent suggested during September to two of its old employees that they join the American Federation of Labor [with which the Machinists was affiliated] as a condition of employment" (R. 614). Its conclusion, however, is incomprehensible. It stated only that (R. 614):

Since the contract has already been abrogated and the men had been discharged, and since the M. E. S. A. was no longer the exclusive representative of the employees, these acts have no relation to the controversy here.

Assuming—contrary to the fact, as we have pointed out above—everything that the court assumes: that the contract was abrogated; that the men were no longer employees; and that the M. E. S. A. was not the exclusive representative of the employees, it would still be true that in imposing membership in a particular labor organization as a condition of employment respondent violated Section 8 (3). No closed-shop agreement existed with the Machinists. The predicates upon which the court below grounded its conclusion would show only that Linski and Pansky were not employees of respondent at the time that respondent required

them to join the Machinists as a prerequisite to their being employed. In that case they would be in the same position as men applying for a position with respondent for the first time. But Section 8 (3) of the Act in express terms makes no distinction between "hire" and "tenure" in its command that an employer refrain from encouraging or discouraging membership in any labor organization. *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333; *Jeffery-De Witt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731; *National Labor Relations Board v. Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, No. 907, May 23, 1938.¹⁵ The contrary conclusion by the court below would leave the employer free at the outset to choose for the men the labor organization with which it would deal, contrary to the plain meaning of the Act that the choice is to be that of the men themselves.

CONCLUSION

For the reasons above set forth, it is respectfully submitted that the judgment of the court below

¹⁵ See also *Algonquin Printing Co.*, 1 N. L. R. B. 264, 269-270; *Montgomery Ward & Co.*, 4 N. L. R. B. 1151, 1167-1168; *Kelly-Springfield Tire Co.*, 6 N. L. R. B. 325, consent decree entered, 97 F. (2d) 1007 (C. C. A. 4th).

should be reversed with directions to enforce order of the Board in full.

✓ ROBERT H. JACKSON,
Solicitor General

✓ CHARLES A. HORSKY,
Special Attorney

✓ CHARLES FAHY,
General Counsel,

✓ ROBERT B. WATTS,
Associate General Counsel,

✓ LAURENCE A. KNAPP,

✓ MORTIMER B. WOLF,

SAMUEL EDES,

Attorneys,

National Labor Relations Board

NOVEMBER 1938.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Supp. II, Title 29, Sec. 151 *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

(3) The term "employee" shall include * * * any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, * * *.

* * * * *

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, * * *.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, * * * shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

SEC. 10.

* * * *

(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

FIL

In the S

T

In C

or ce
ghts g

ed to
m or
re or
organ
in t
emplo
labor
ained.
his Act
as a co
herein.
sentati
section
orgainin
en mad
vely wit
s, subje

gnated o
tive bar
loyees in
ses, shal
all the
poses of
rates of
or other
ed, That
of em-
time to
r.

*

Board as
ce, shall

FILE COPY

Office - Supreme Court, U. S.

FILED

SEP 10 1938

SHANNON LEWIS GROPLEY
CLERK

In the Supreme Court of the United States
OCTOBER TERM, 1938.

No. 274.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

THE SANDS MANUFACTURING COMPANY,
Respondent.

BRIEF OF RESPONDENT

In Opposition to Petition for Writ of Certiorari.

✓ HARRISON B. MCGRAW,

Guardian Bldg., Cleveland, Ohio,

WELLES K. STANLEY,

Union Commerce Bldg., Cleveland, Ohio,

HARRY E. SMoyer,

Union Commerce Bldg., Cleveland, Ohio,

Counsel for Respondent.

In the Supreme Court of the United States

OCTOBER TERM, 1938.

No. 274.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

VS.

THE SANDS MANUFACTURING COMPANY,

Respondent.

BRIEF OF RESPONDENT

In Opposition to Petition for Writ of Certiorari.

HARRISON B. MCGRAW,

Guardian Bldg., Cleveland, Ohio,

WELLES K. STANLEY,

Union Commerce Bldg., Cleveland, Ohio,

HARRY E. SMOYER,

Union Commerce Bldg., Cleveland, Ohio.

Counsel for Respondent.

INDEX.

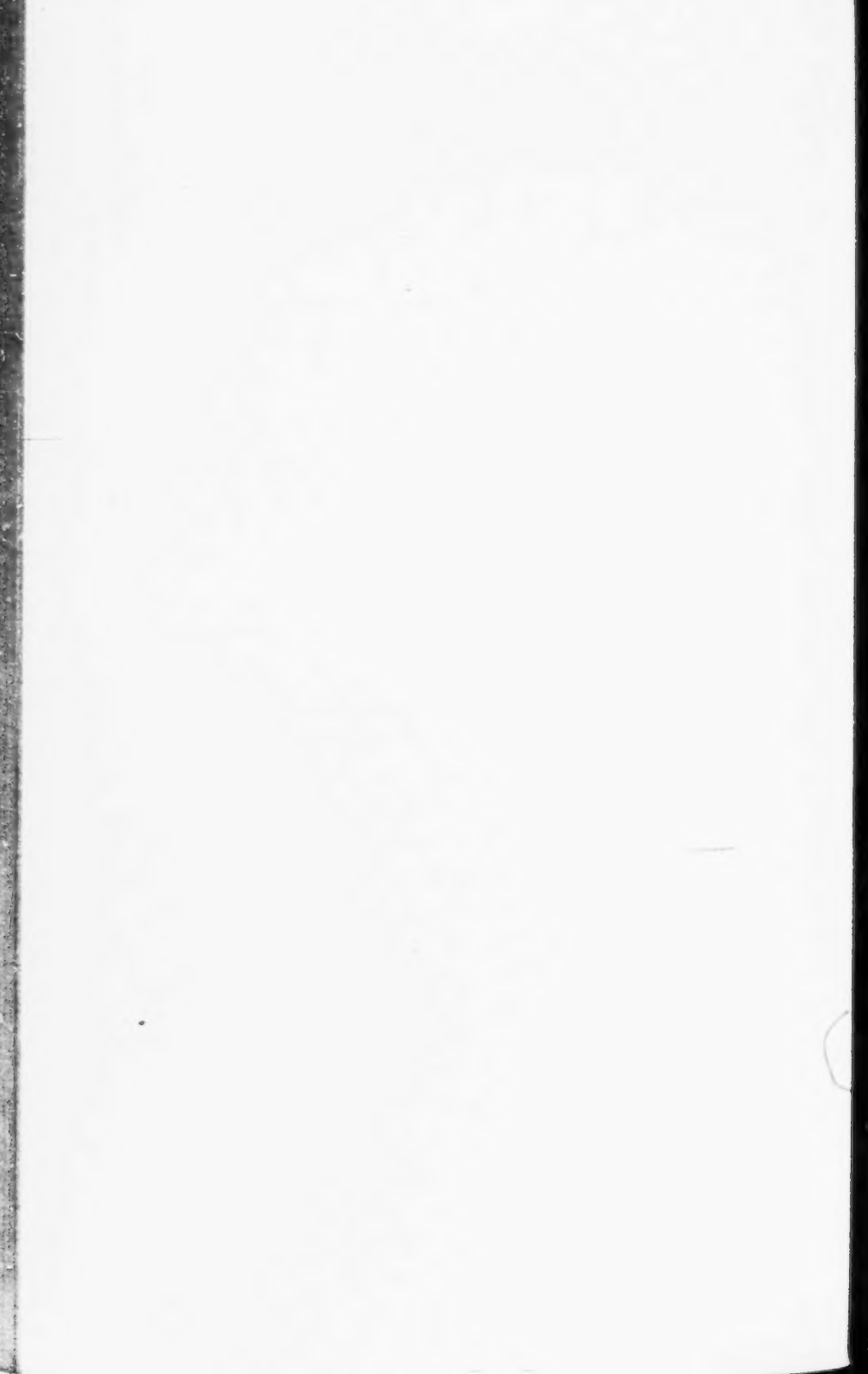
STATEMENT	1
(a) Omitted Facts Which Transpired Between April, 1934 and June 15, 1935.....	2
(b) Omitted Facts Concerning the Negotiations Which Culminated in the June 15, 1935 Contract, and its Interpretation by the Parties Thereto.....	4
(c) Omitted Facts Concerning the Negotiations Between June 17, 1935 and August 1, 1935.....	5
(d) Omitted Facts Concerning the August, 1935 Negotiations	7
(e) Omitted Facts Showing the Committee's Ultimatum and the Impasse.....	8
(f) Respondent Abrogated its Agreement and Filled the Places of the M.E.S.A. Employees because of Their Breaches of Contract.....	8
(g) The Board Found the Impasse Complete.....	9
(h) The Board Found Respondent Honest and Sincere in its Opinion that the Employees had Wilfully Broken their Contract.....	9
(i) The Board Found Respondent's Impelling Motive was Operating Efficiency and not any Purpose to Violate the Act.....	10
(j) Respondent Fully Performed the Contract. It Was Entitled to Performance.....	11
(k) The Board's Own Findings are to the Effect that Respondent was not Attempting a General Wage Reduction	11
(l) Respondent had No Opportunity to Reinstate any M.E.S.A. Employees	12
(m) The M.E.S.A. Would Not Permit its Members to Apply for Reinstatement.....	13
(n) Potter's Telephone Call.....	13

- (o) The Shop Committee Never Requested a Meeting after the Shutdown. Rather it Maintained its Defiant Position by Picketing Respondent's Plant for Thirty (30) Days.....
 - (p) There Were No "Changed Conditions" after August 21st, 1935.....
 - (q) The Trial Examiner Held that the Committee Gave Little Consideration to the Wishes of Respondent in Connection with the Operation of its Plant....
 - (r) There Was No Substantial Evidence of Any Hostility on the Part of Respondent to the M.E.S.A.
- The Errors Assigned by Petitioner Do Not Conform to the Facts Found by the Board and the Admitted Facts in the Record.....
- There is No Conflict with Jeffery-DeWitt Insulator Co. v. National Labor Relations Board.....
- There is No Conflict with National Labor Relations Board vs. Mackay Radio & Telegraph Co.
- In Re National Labor Relations Board v. Columbian Enameling and Stamping Co., Inc.
- The Decision Below is Right.....
- CONCLUSION

Cases Cited.

-
- Dermott v. Jones*, 2 Wall. 1.....
- The Harriman*, 9 Wall. 161.....
- Jeffery-DeWitt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134, certiorari denied, 302 U. S. 731.....20, 21
- National Labor Relations Board v. Columbian Enameling and Stamping Co., Inc.*, No. 229, October Term 193826

<i>National Labor Relations Board v. Jones & Laughlin Steel Corporation</i> , 301 U. S. 1, 45, 57 S. Ct. 615, 628, 81 L. ed. 893, 108 A. L. R. 1352.....	19, 24
<i>National Labor Relations Board v. Mackay Radio & Tel. Co.</i> , Vol. 82, L. ed., Adv. Op., Oct. Term No. 17, p. 867	24, 25, 26
<i>National Labor Relations Board v. Mackay Radio & Telegraph Co.</i> , 58 S. Ct. 904, 910.....	22
<i>Twin City Pipe Line Co. v. Harding Glass Co.</i> , 283 U. S. 353, at 356.....	28



In the Supreme Court of the United States

OCTOBER TERM, 1938.

No. 274.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

THE SANDS MANUFACTURING COMPANY,

Respondent.

BRIEF OF RESPONDENT

In Opposition to Petition for Writ of Certiorari.

To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:

STATEMENT.

A comparison of petitioner's statement (pp. 5 to 11, inc. of its petition) with the Board's findings of fact (R. 28-40, inc.) suggests at once the possibility of material omissions. A comparison of said statement with the determinative facts extracted from the Board's own findings as they are stated by the Circuit Court of Appeals in its opinion (96 F. (2d) 721, R. 607-615, inc.) demonstrates the fact that there have been omitted from the petition many undisputed facts material to this Court in its consideration of the petition. It is, therefore, necessary that the most important of these material omissions be supplied here.

**(a) Omitted Facts Which Transpired Between
April, 1934 And June 15, 1935.**

Petitioner states that in 1934 a majority of respondent's employees became members of the M.E.S.A. (pp. 6 of its petition). It next states that after two strikes respondent and the M.E.S.A. entered into a contract dated June 15, 1935 (p. 6 of its petition). The false inference that arises from the sequence of these two statements, viz: that respondent did not recognize or bargain with M.E.S.A. until after two strikes, is accomplished by the petitioner's failure to state the following facts which transpired between April, 1934 and June 15, 1935, to-wit:

The organization of respondent's employees was accomplished without any opposition on the part of respondent whatsoever (R. 127). In fact, respondent stopped its factory so as to permit them to organize during work hours (R. 408). Their request that respondent deal with their committee and with the representatives of the M.E.S.A. was promptly granted by respondent (R. 128). After negotiations, and without a strike, a written contract in reference to wages, hours and work conditions, and providing for an increase in wages, was consummated on May 2, 1934. The agreement was in effect for sixty (60) days (R. 29, 598, 608).

In the fall of 1934 the M.E.S.A. agreed that respondent could hire additional workmen to fill a projected Government order, on condition that it discharge such additional men when the order had been completed. About 35 new men were hired. All but ten of the additional men became members of the M.E.S.A. without opposition by respondent. After the completion of the order the new men were discharged (R. 608).

Throughout the entire year from May, 1934 to May, 1935 respondent negotiated with M.E.S.A. T

M.E.S.A. never had any trouble getting meetings with the respondent (R. 129, 613).

By mutual consent respondent and the M.E.S.A. employees continued to operate under the agreement of May 2, 1934 until May 21, 1935, upon which date a strike was called (R. 29, 608).

The May, 1935 strike was called during negotiations for a new agreement. It was precipitated by a demand for wage increases which the respondent refused to grant. Negotiations continued during the strike. About June 1, 1935 an oral agreement was entered into under which the strikers returned to work June 3, 1935 pending the drafting of a written contract. On June 6th the employees struck again because respondent had refused to reinstate seven of the strikers because of their inefficiency (R. 29, 30, 608). Potter, official representative of the M.E.S.A., said that several of them might be incompetent (R. 138, 608).

Further negotiations continued during this second strike which culminated in a written agreement on June 15, 1935, containing *inter alia* the provisions quoted on page 6 of the petition (R. 30, 600, 608). The agreement called for an increase in wages, for the discharge of certain employees objected to by the shop committee, and otherwise regulated the conditions of employment. On June 17, 1935 the employees, including the seven whom respondent wanted to discharge, then returned to work (R. 30, 600, 609).

The contract was drafted by the shop committee, certain changes being made at the insistence of respondent (R. 34, 608).

(b) Omitted Facts Concerning The Negotiations Which Culminated In The June 15, 1935 Contract, And Interpretation By The Parties Thereto.

What the changes insisted upon by respondent were, what the situation they were intended to correct was, what they were incorporated into the contract, and what the committee's understanding and interpretation of them were, are matters of great importance because the facts concerning these questions were among the foundation stones supporting respondent's defense. On each of these matters also, petitioner's statement is silent. The omitted facts are:

During the depression preceding 1935, in order to afford to its employees as much steady employment as possible, a practice had grown up in respondent's plant whereby, when work was slack in a particular department, respondent would transfer the employees who would otherwise be laid off to busier departments continuing during the period of the transfer to pay them their regular wage rates irrespective of the work done (R. 31, 611). Respondent considered this practice inefficient. It therefore insisted in the negotiations which culminated in the June 15, 1935 contract that the seniority system be changed from plant wide to departmental. To accomplish this change the phrase "and by departments" was added to Article 5 of the agreement of June 15, 1935, which was originally submitted to respondent in the following form: "When employees are laid off, seniority rights shall be determined by the last rule" (R. 34, 611, 612). The word "only" was inserted in Article 6 at the instance of respondent (Compare R. 603, an early draft of said contract, with R. 600, the final draft, R. 612). The express purpose of these changes was the abolition of the above practice. The shop committee understood that the change

were for the purpose of enabling the respondent to "run by departments" (R. 574, 576, 579, 289, 365, 612). Shortly after the execution of the contract respondent posted in its plant a classification of its employees by departments, and thus gave notice of its intention and desire to proceed under the contract (R. 170, 175, 206, 434, 518, 574, 612).

(c) Omitted Facts Concerning The Negotiations Between June 17, 1935 And August 1, 1935.

On page 6 of the petition the petitioner's statement jumps from June 15, 1935 to the beginning of August, 1935 thereby creating the false inference that the controversy between respondent and its employees arose on the latter date. Also, that negotiations between respondent and the shop committee did not begin until that date. Nothing could be farther from the facts. The omitted facts are:

Discussions between the shop committee and the respondent concerning the application of the rule of departmental seniority began within a week after the men returned to work on June 17th (R. 294). They continued throughout July (R. 289, 290, 291, 387). Meantime the respondent again "tried out" the old practice and again condemned it (R. 290, 291). Article 20 of the agreement of June 15th was a constant threat to strike. It provided as follows:

"In case of a misunderstanding between the management and the employees, the committee shall allow the management forty-eight (48) hours to settle the dispute, and if then unsuccessful the committee shall act as they see fit." (R. 602)

It is plain that respondent again "tried out" the old practice because of the insistence of the men and because of the constant fear of strikes (R. 612).

By the middle of July practically all of respondent's accumulated orders had been filled and respondent proceeded to reduce its working force. About July 15, 1935, after conferences between the management and the employees, all the men in the tank heater department, with the exception of the foreman, an "old" M.E.S.A. employee, were laid off (R. 30, 609).

(The footnote at the bottom of page 6 of the petition correctly defines "new" and "old" men as those terms have been used throughout this case.)

About July 30, 1935 a notice was posted on the time clock in the plant of respondent that the new men would be laid off on July 30, 1935 and the old men would be laid off on August 2, 1935. After the lay off of the new men another notice was posted to the effect that the plant would be operated with the old men on a schedule of three days a week (R. 30, 609).

We digress momentarily to mention that at about the time of the settlement of the strike, June 17th and thereafter, a number of the "new" men became members of the International Association of Machinists affiliated with the American Federation of Labor (R. 38, 609).

We now return from the digression and quote from the findings of the Board the immediate dispute which brought the controversy to a head:

"Thus, by the end of July and the beginning of August, some departments were being operated on a part time basis and others had been practically shut down. At or about this time, the respondent wished to increase the working force in the machine shop, the key department, while at the same time shutting down the other departments. Repeated conferences were held between the management and the shop committee in reference to this matter. The posi-

tions of the respondent and the employees were diametrically opposed. The management contended that new men, experienced in machine shop work, be employed in preference to the old men. The shop committee contended that there was sufficient stock in the machine shop, and that in any event, under the agreement of June 15, 1935, the respondent could not hire any new men for the machine shop as long as old men were still laid off. The management claimed that the shop committee was insisting upon a violation of Article 5 of the agreement." (R. 31, emphasis ours) (R. 609)

(It should be remembered that the "new" men respondent wished to hire for its machine shop were former employees, temporarily laid off, who were entitled under the National Labor Relations Act to non-discriminatory representation by the M.E.S.A. as the exclusive collective bargaining agent in respondent's plant.)

(d) Omitted Facts Concerning The August, 1935 Negotiations.

Additional conferences were held at frequent intervals until August 19th when the shop committee was asked by the management to consult with the men and report whether they desired that the working force in the machine shop should be increased with "new" men while other departments were temporarily shut down, or that the whole plant should be temporarily shut down. Two days later the committee stated that it preferred that the plant be shut down. Respondent closed its factory on August 21st (R. 31, 32, 609) (Petition, p. 7).

**(e) Omitted Facts Showing The Committee's Ultimatum
And The Impasse.**

The nature of the committee's reply on August 21st to respondent's request on August 19th that the committee go back to the men to see if they could find "a solution to the problem" (R. 519, 570, 572), demonstrates the completeness of the impasse. Pansky, a committeeman, testified:

"He could shut down for a couple of weeks if he preferred it, but he couldn't lay off the old men first."
(R. 377)

Jindra, another committeeman, testified:

"We could see no way out, so we told the management to shut down the plant." (R. 572)

It was an ultimatum from the employees to the respondent meaning that the respondent either waive departmental seniority or shut down its plant. It was reinforced by Article 20 of the agreement (R. 602) which meant that respondent must either agree with the committee within forty-eight (48) hours or they would call a strike (R. 612).

**(f) Respondent Abrogated Its Agreement And Filled The
Places Of The M.E.S.A. Employees Because Of Their
Breaches Of Contract.**

Respondent then abrogated its agreement with the employees. On August 26th or 28th it negotiated an agreement with the International Association of Machinists and sought experienced machinists through said union and the Cuyahoga County relief organizations. On September 3rd the respondent opened its machine shop, invited a number of its former machine shop employees, all members of the International Association of Machinists, to return to work, but filled other places in the machine shop with new men instead of calling old men from other

departments of the plant. Respondent offered individual contracts to four of the old M.E.S.A. men whom it wished to employ as foremen. The Board found that to two of them the offer was made on condition that they join the International Association of Machinists (R. 32, 609).

(g) The Board Found The Impasse Complete.

The Board in its findings alleges a duty on the part of respondent to inform the committee that, in the event they ordered a shut down on August 21st, it was respondent's intention that the M.E.S.A. employees would not be recalled and then bargain about that (R. 37). The futility of such an act and the temper of the men is best shown by the Board's own finding in that regard:

"Nothing was said by Garry Sands or anybody else in behalf of the respondent to the committee which would have indicated that the closing of the plant meant that the old employees would not be recalled. *It is inconceivable that the committee would have accepted this, especially since the men had been so successful when they struck a few months earlier.*" (R. 37) (Emphasis ours).

In other words, the employees would have maintained their position and there would have been a strike.

(h) The Board Found Respondent Honest And Sincere In Its Opinion That The Employees Had Wilfully Broken Their Contract.

The sincerity of respondent's claim that the shop committee had taken its position in wilful violation of the contract was admitted by the Board in its decision, but is omitted in petitioner's statement. On this point the Board found:

"Although the Board is of the view that an *honest* difference of opinion existed on the construction of

the June 15th agreement, the case against the respondent is not in any way prejudiced if the stand of the shop committee in resisting the demand of the respondent to build up the machine shop with new men instead of with old men is considered a violation of the agreement." (R. 36) (Emphasis ours).

The latter part of this statement, if it were affirmed, would make of respondent's contract with the M.E.S.A. a mere "scrap of paper," render futile and unenforceable the collective bargaining contracts which the National Labor Relations Act was designed to promote, and deprive all parties to them of any legal reason for entering into such contracts.

(i) The Board Found Respondent's Impelling Motive Was Operating Efficiency And Not Any Purpose To Violate The Act.

The motive of the respondent for insisting upon compliance with the contract is important, for by it are all of respondent's later acts to be judged. The petition would infer an ulterior motive and omits to state the Board's own finding as to the underlying motive for respondent's acts. We therefore quote said finding:

"Rates of pay in respondent's plant depended on length of service and not on the nature of the work. Thus, when old men were transferred to any department, they continued to receive higher rates than younger men in the same department. *We are inclined to believe that the impelling motive for the opposition of the respondent to transferring the old men to the machine shop instead of hiring new men lay in this fact.* In fact, Garry Sands testified that after the shutdown of August 21st, he complained to Albert Farrell, one of the old men, about the unfairness of transferring men receiving high wages to do work which could be done by men receiving much less." (R. 36)

Therefore, the impelling motive was operating efficiency and not to interfere with its employees in the exercise of their rights to organize and bargain collectively, and the Board so finds.

(j) Respondent Fully Performed The Contract. It Was Entitled To Performance.

Whether or not respondent performed its contract is important. Nowhere in this case has it ever been charged that respondent violated its contract. On this point the Court below said:

“Respondent is not charged with breaking the contract, and, in fact, this record shows that it complied on its part with all terms of the agreement, but the shop committee refused to permit respondent to increase the force in the machine shop in accordance with the contract, even though the only alternative was closing the plant.” (R. 612)

(k) The Board's Own Findings Are To The Effect That Respondent Was Not Attempting A General Wage Reduction.

On page 7 of the petition, the petitioner would lead this Court to believe that a general wage reduction was in respondent's mind. The absolute falsity of this assertion is demonstrated by the Board's finding as to the impelling motive for respondent's acts hereinbefore quoted (R. 36). It is further negatived by the Board's finding that the offer of re-employment at lower wages for guaranteed steady work was made to the four “old” men, and no more:

“However, Hilliard J. Sands, who was present at these conversations, admitted in his testimony that Garry Sands told Pansky, Linsky, Dolish and Ochs, the four men who were called back, that the offer of re-employment was being made only to them and not to the rest of the old men.” (R. 33)

The falsity of the assertion is further negatived by a finding refused by the Board (R. 77) but compelled by the uncontradicted evidence in the record, namely, that the respondent desired to hire these four "old" men for foremen (R. 329, 332, 343, 380). Pansky was a foreman (R. 381). Linsky was a foreman (R. 338). Dolish was a leader or keyman (R. 327). Ochs was to have been given charge of the coil room and the tank heater department (R. 391). The falsity of the assertion is completely proved by the fact that the individual negotiations with these four "old" men took place, *not before, but after* the new contract had been negotiated with the International Association of Machinists (R. 32). That said new contract provided lower wage rates than the M.E.S.A. contract is of no moment when it is remembered that in the main it covered help without previous experience in respondent's plant, to be recruited from the unemployed union members and from the relief organizations, and that there was no piece work in respondent's plant. The Board's own finding is that wages in respondent's plant depended on length of service (R. 31). It could not be expected that first time employees should receive the same rates as the old employees.

(1) Respondent Had No Opportunity To Reinstate Any M.E.S.A. Employees.

Petitioner's statement that "Others of the 'old' men who applied for their positions were told that their places were taken" requires further facts lest another false inference be raised. The Board's finding as to this matter is as follows:

"A few of the old men asked respondent for work after the plant reopened, but were told that their places were taken." (R. 33)

It is uncontradicted that no one of the M.E.S.A. employees asked to be reemployed until about thirty (30) days after

the plant had reopened and after the picketing by the M.E.S.A. had ceased (R. 535). That their places were filled is undenied.

(m) The M.E.S.A. Would Not Permit Its Members To Apply For Reinstatement.

The reason that only a few of the M.E.S.A. employees applied for reemployment, and then only after a lapse of thirty (30) days after the plant reopened, was conclusively established to have been because the M.E.S.A. announced a policy of suspending from its membership any member who went to work for respondent after September 3, 1935. This finding was refused by the Board (R. 76). The fact was admitted by the secretary of the M.E.S.A. union to which the employees belonged (R. 230, 231). It was not denied.

(n) Potter's Telephone Call.

On page 8 of the petition it is stated that the M.E.S.A. asked Sands to meet with the committee and Sands refused. This is a clever disguise of the facts, which are as follows:

At the time of the organization of respondent's employees by the M.E.S.A. Potter was employed by respondent and became a member of the Shop Committee (R. 29). Later in 1934 he left respondent's employ and became state chairman of M.E.S.A. (R. 29). He continued to participate in negotiations with respondent for some time (R. 29). *Potter last participated in negotiations with respondent on May 30th or May 31st, 1935. He was not present in the negotiations by which the second strike which occurred June 6, 1935, was settled (R. 145, 146). From that time on all negotiations were handled by the Shop Committee without Potter (R. 31, 158). Potter re-entered the picture for the first time on September 3, 1935, the date upon which*

respondent reopened its plant. On that date he telephoned Garry Sands (R. 134).

(Note in his testimony the complete absence of any reference to the committee and that his opening remark to Mr. Sands was in substance: "What the hell are you trying to pull off there?" (R. 134) This telephone conversation, resolved by the Board from conflicting evidence as to whether or not Potter asked Sands to meet him at all, is all the evidence there is in the Record tending to support the Board's finding that the respondent refused to bargain.)

(o) The Shop Committee Never Requested A Meeting After The Shutdown. Rather It Maintained Its Defiant Position By Picketing Respondent's Plant For Thirty (30) Days.

The Board refused to find, although the evidence in support of it is uncontradicted and undenied, that after August 21st, 1935 the shop committee made no request for a meeting with respondent. Nor did it after that date evidence any intention to withdraw in the slightest degree from the position it had taken prior to that date in opposition to the rule of departmental seniority set forth in the contract (R. 76).

Petitioner's statement is likewise silent on the activities of the M.E.S.A. beginning September 3, 1935. The omitted facts are:

The M.E.S.A. immediately started to picket respondent's plant and continued their picketing all during the month of September (R. 34). They continued to enforce their policy of suspending from membership all M.E.S.A. members who should apply for reinstatement (R. 76).

(p) There Were No "Changed Conditions" After August 21st, 1935.

These acts of the M.E.S.A., and each of them, demonstrate the settled determination on the part of the M.E.S.A. to adhere to the position taken by them on August 21, 1935 when they ordered respondent to shut down its plant rather than submit to the rule of departmental seniority established by their contract with respondent. In the light of these facts petitioner's remark about changed conditions after August 21st (p. 11 of the petition) is incongruous.

(q) The Trial Examiner Held That The Committee Gave Little Consideration To The Wishes Of Respondent In Connection With The Operation Of Its Plant.

Petitioner's statement is also silent as to the deportment of the committee. The Trial Examiner saw and heard the members of the Shop Committee testify. In his report he stated:

"It is the opinion of the undersigned that much of the difficulties might have been averted had the said employees given greater consideration to the wishes of the management in its operation of its plant, particularly in its desire to increase production in the machine shop department during the middle of August, 1935."
(R. 61, 62)

This opinion by the Trial Examiner was arbitrarily disregarded by the Board in its findings and a finding to this effect was arbitrarily refused by the Board (R. 91).

(r) There Was No Substantial Evidence Of Any Hostility On The Part Of Respondent To The M.E.S.A.

The Board's statement that the court below ignored the Board's findings upon evidence that in June and July respondent had evinced hostility toward the M.E.S.A. commands attention (p. 11 of petition).

In its anxiety to find evidence tending to show antagonism on the part of respondent to the M.E.S.A. union the Board pounced upon the Sands-Rudd and McKiernan Norman conversations (R. 38).

The Sands-Rudd conversation took place within ten (10) days of June 17th (R. 218, 420). Such a conversation in June, immediately following two strikes called three days apart (R. 30) would be *too remote* to furnish a motive for respondent's acts late in August. *Contrary to the evidence the Board adjusted the date by placing the conversation "late in July"* (R. 38). McKiernan was the shipping clerk (R. 503). His conversation with Norman took place June 26th, two months before the impasse. After being passed around from foreman to foreman, there was a hearing and Norman was discharged as completely incompetent and inefficient, with the approval of the committee (R. 35). The committee never told him that they agreed to his discharge. He testified, "I think it was a grudge against me" (R. 302). McKiernan, the shipping clerk who discharged him, denied that the union was mentioned in the conversation (R. 504). Uncorroborated, the Board accepted Norman's statement rather than McKiernan's when only a cursory reading of Norman's testimony will convince the reader that his testimony on this point is incredible. Furthermore, the conversation took place June 26th.

On the other hand, the charge was filed in behalf of 47 men. *If respondent had committed any acts of hostility toward M.E.S.A. as an organization, from these 47 men the Board would have been able to unearth some real evidence on the subject, some act or acts closer than two months, that would prove that hostility.* That the Board found no such evidence and presented no such evidence certainly dispels even the slightest suspicion that may have been otherwise created.

The court below rightly held that there is no substantial evidence to support the Board's finding in that regard, a holding consonant with the Board's finding that respondent was honest in its stand on the contract and that the impelling motive was to put an end to an inefficient practice in its factory in a manner within its rights under its contract.

The court's holding that:

"In view of the background, the uncontroverted facts as to the complete lack of any attempt to prevent organization or to discourage affiliation with the M.E.S.A., the want of espionage or coercion practiced on the part of the management and the express findings of the Board as to repeated conferences, honest difference of opinion, and diametrical opposition of views, we think that only one conclusion can be drawn, namely, that the respondent sincerely attempted over a long period to negotiate with the M.E.S.A." (R. 613).

was compelled by the record.

The Errors Assigned By Petitioner Do Not Conform To The Facts Found By The Board And The Admitted Facts In The Record.

1. Petitioner assigns as error the action of the Circuit Court of Appeals in not holding that respondent violated the National Labor Relations Act by failing to bargain collectively with the fully authorized representatives of its employees at a time "*when changed circumstances indicated a reasonable probability that a prior temporary impasse could be resolved through further negotiation.*" (p. 11 of the petition).

The error assigned is in direct conflict with the petitioner's argument to support it in that, in the error assigned, it is assumed that the alleged temporary impasse could be "resolved through further negotiation" (p. 12

of petition). Later the petitioner argues that it was to be hoped that sufficient orders would accumulate during the period of a temporary shutdown and that the issue thereby "would become moot" (p. 15 of the petition). This is equivalent to an admission on the part of the petitioner that further negotiations would accomplish nothing. The fact that the issue had arisen right after the June strike, when there was a large volume of orders, proves that it would not become moot.

The facts found by the Board as to the settled determination of the committee to insist that respondent waive the rule of departmental seniority established by the contract, and as to their directing the picketing of respondent's plant for thirty (30) days for the purpose of enforcing that position, completely refute the petitioner's assumptions as to "changed circumstances," "reasonable probability," "prior temporary impasse," and that anything could be "resolved through further negotiations."

2. The second error assigned by petitioner is the Court's failure to hold that the Board's finding that, following a temporary lay-off of its employees, respondent denied reinstatement to employees because of their affiliation with a particular labor organization, was supported by substantial evidence. This alleged error is completely refuted by the complete lack of evidential facts to support it and by the Board's express findings that respondent's position was *honestly taken* on its interpretation of the contract, that the *impelling motive* was operating efficiency to be secured by enforcing the rule of departmental seniority set forth in the contract, and that *no employees applied for reinstatement until their places had been filled*.

3. Petitioner's third assignment of error concerns respondent's offer to reemploy four "old" men. This alleged error is completely refuted by the uncontradicted facts in the Record that the respondent was not offering

reinstatement to the employees, but was attempting to re-hire upon new terms of employment four "old" men for the purpose of making them foremen over its new crew of employees. The National Labor Relations Act does not prevent an employer from hiring individuals on whatever terms he may by unilateral action determine. *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, 45, 57 S. Ct. 615, 628, 81 L. ed. 893, 108 A. L. R. 1352.

4. Petitioner's fourth assignment of error is likewise not consonant with the facts. It assumes a "temporary lay-off." The findings show that the "old" employees would not perform their services in accordance with the provisions of their contract with respondent. Respondent therefore replaced them with new employees. The old employees were thereby lawfully discharged. The error assigned assumes a "temporary impasse." The facts found by the Board show a settled determination on the part of the employees to maintain that position, a position which they maintained throughout thirty (30) days of picketing and continued to maintain throughout the hearings.

Each of the assignments of error fails to take note of the fact that *the difficulties between respondent and its employees were not occasioned by any impasse in negotiations looking toward a contract. Respondent's difficulties were occasioned by the wilful refusal of the employees to perform their contract. Respondent's contract gave it the right to departmental seniority in its plant without further negotiations immediately upon the execution and delivery of the contract. In negotiating for its performance by the employees for two full months and more before exercising its right to abrogate the agreement, respondent went farther than the "second mile" in an honest effort to dispose of the controversy by negotiations.*

5. Petitioner's fifth assignment of error is disposed of by the Board's findings of fact and by other admitted facts, all of which disclose no evidential basis for the Board's order, and that the order was erroneous, and should not have been issued, wherefore it should not have been enforced and was rightly set aside and held for naught.

There Is No Conflict With Jeffery-DeWitt Insulator Co. v. National Labor Relations Board.

As a reason for granting the writ, petitioner alleges a conflict with *Jeffery-DeWitt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134, certiorari denied, 302 U. S. 731.

There is no conflict between the cases.

In the *Jeffery-DeWitt* case the 1935 dispute arose over the making of a contract. It followed unsuccessful attempts on the part of the union in 1933 and 1934 to secure a written agreement.

In the *Sands* case the dispute arose over the wilful refusal of the employees to perform a contract already made.

The *Jeffery-DeWitt* case prescribes the extent to which an employer must go in endeavoring to reach an agreement with the representatives of his employees.

The *Sands* case accepts a collective bargaining agreement as a contract mutually enforceable by the parties and prescribes a limit beyond which the employer need not go in negotiations when employees refuse to perform their contract.

In the *Jeffery-DeWitt* case the respondent's rights were determined solely upon the rights of the employer and employees under the National Labor Relations Act.

In the *Sands* case the respective rights of the employer and employees were first established by a contract made pursuant to the provisions of the National Labor Re-

lations Act. The adjudication of their rights required *that respondent be accorded the full measure of its rights under that contract. It was not the purpose of the National Labor Relations Act to destroy respondent's contract.*

In the *Jeffery-DeWitt* case those with whom respondent refused to bargain were striking employees.

In the Sands case the places of the old employees *were lawfully filled by Sands with other employees because of the breach of their contract by the M.E.S.A. employees.*

In the *Jeffery-DeWitt* case on four different dates while the strike was on and the respondent had not more than 50% of a full complement of employees working, *the respondent refused to meet with the committee although requested to do so by Conciliators at the instance of the committee.*

In the Sands case, after a new contract had been made with another labor organization under which new employees would render their services, *Sands received one telephone call from a union official who had not been in the previous negotiations. There were no communications by any Conciliators and none whatever by the Shop Committee with which the negotiations had been conducted.*

In the *Jeffery-DeWitt* case the finding was that after nearly a month of idleness the striking employees *were doubtless willing to make concessions.*

In the Sands case the conclusion is compelled that the M.E.S.A. *was willing to make no concessions on September 2, 1935, that it immediately instituted the picketing of respondent's plant and continued said picketing for thirty (30) days to enforce its position. During all of this time the M.E.S.A. admitted that it promulgated a policy that it would suspend from membership any M.E.S.A. employee who applied for reinstatement. The record shows that it maintained the same position at the hearing.*

Petitioner's observation that at the time the plant was shut down it was intended that enough orders would cumulate so that the issue in controversy would become moot (p. 15 of the petition) is manufactured and without support in the Record. The converse is true because the finding that the issue was in dispute immediately after the men returned to work in June (R. 30, 34). At this time there were so many orders that the respondent was forced to hire additional help (R. 30).

In the *Jeffery-DeWitt* case the respondent *had taken no step* that would prevent further negotiations likely to culminate in an agreement.

In the Sands case the respondent *lawfully abrogated its agreement and, with the A. F. of L. organization, entered into a lawful and mutually enforceable agreement inconsistent with the M.E.S.A. agreement.*

For the above reasons there is no conflict between the Sands case and the *Jeffery-DeWitt* case.

There Is No Conflict With National Labor Relations Board vs. Mackay Radio & Telegraph Co.

As a second reason for granting the writ, petitioner alleges that the decision of the court below is in conflict with the decision of this Court in *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 58 S. Ct. 904, 909. There is no conflict between the decisions.

In the *Mackay* case a strike was called in San Francisco by the union *because of the unsatisfactory state of its negotiations for an agreement with the employer.* The employer filled the places of the strikers with transferred employees to eleven of whom it promised that their positions would be permanent. Within three days after the strike was called the strikers became convinced that the strike would fail and desired to return to work. Their desire was con-

municated to the employer. The employer said they might return to work but, on a list of all the strikers, the employer checked the names of eleven who he said would have to make applications for reinstatement which would be subject to the approval of an executive of the employer in New York. Shortly thereafter six of the eleven strikers in question took their places and resumed their work without challenge, it having turned out that only five of the transferred employees desired to stay in San Francisco. The remaining five of the strikers on the list, each of whom was prominent in union activities, *applied for reinstatement*. They were told their positions were filled and that their applications for reinstatement would be considered in connection with any vacancy which might occur. They then filed charges of discrimination under Section 8 (3) of the National Labor Relations Act. The Board ordered them reinstated with back pay. The decision of the Circuit Court of Appeals refusing to enforce the order was reversed by this Court on the ground that the preparation and use of the list *was with the purpose to discriminate against those most active in the union* and therefore a violation of the Act.

However, this Court held:

"There is no evidence and no finding that the respondent was guilty of any unfair labor practice in connection with the negotiations in New York. On the contrary, it affirmatively appears that the respondent was negotiating with the authorized representatives of the union. *Nor was it an unfair labor practice to replace the striking employees with others in an effort to carry on the business.* Although §13 provides, 'Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike,' it does not follow that an employer, guilty of *no act denounced by the statute*, has lost the right to protect and continue his business by supplying places

left vacant by strikers. And he is not bound to discharge those hired to fill the places of strikers, upon the election of the latter to resume their employment, in order to create places for them."

National Labor Relations Board v. Mackay Radio & Tel. Co., Vol. 82, L. ed., Adv. Op., Oct. Term No. 17, p. 867. (Emphasis ours.)

There is a great difference between employees who strike because of a legitimate trade dispute and employees who refuse to render their services in accordance with their contract, as in the Sands case. In the latter case the employer has the right to discharge him and there is nothing in the National Labor Relations Act that deprives the employer of this right.

As was said by this Court:

"The act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion."

National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, at page 45, 57 S. Ct. 615, 628, 81 L. Ed. 893, 108 A. L. R. 1352.

In our case at the time of the refusal of the M.E.S.A. employees to perform under their contract respondent was guilty of no unfair labor practice. Acting upon their refusal it filled the places of the M.E.S.A. employees with A. F. of L. employees. Even if the M.E.S.A. employees had thereafter applied for reinstatement and respondent had refused to reinstate them because their places were filled, under the *Mackay* case there would have been no vio-

lation of the Act. *But the M.E.S.A. employees never did apply for reinstatement and the M.E.S.A. union refused to permit them to apply for reinstatement, as hereinbefore shown. There was therefore no violation of Section 8 (3) of the Act.*

The *Mackay* case also has a bearing on respondent's acts with reference to the four "old" M.E.S.A. men to whom the respondent offered foremen's positions. That there was no union discrimination in their selection is evidenced by the fact that some of them had been foremen and that Pansky, one of the "old" men was a member of the shop committee, and that all of them were members of the M.E.S.A. Bearing on respondent's right of selection under the circumstances, this Court said in the *Mackay* case:

"As we have said, the respondent was not bound to displace men hired to take the strikers' places in order to provide positions for them. It might have refused reinstatement on the grounds of skill or ability but the Board found that it did not do so. It might have resorted to any one of a number of methods of determining which of its striking employees would have to wait because five men had taken permanent positions during the strike. * * *"

National Labor Relations Board vs. Mackay Radio & Tel. Co., Vol. 82 L. ed. Adv. Ops. Oct. Term, 1937 No. 17, p. 868.

The *Mackay* case defines the duties of the employer toward strikers who have lost a strike and *who apply for reinstatement after they have called off the strike*. It holds that it is a violation of Section 8 (3) of the National Labor Relations Act to refuse to reinstate them to available jobs upon application or to discriminate between them for union activity in making reinstatements. *Section 8 (5) of said Act, which makes it an unfair labor practice to refuse to bargain collectively was not involved in the Mackay case.*

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

242

38-96



In our case the bargaining had already occurred. There was a bargain, a written contract. The complaining employees had broken that contract. Furthermore the respondent never offered to return and perform their services in accordance with their contract with respondent. Neither did they ever apply for reinstatement on any other terms. *There can not be a refusal to reemploy or to reinstate until there has been an offer or request on the part of the complaining employees to return to work.*

The *Mackay* case approves the procedure employed by the respondent and between it and the opinion of the Court below there is no conflict.

In Re National Labor Relations Board v. *Columbian Enameling and Stamping Co., Inc.*

Petitioner refers to its petition for certiorari in *National Labor Relations Board v. Columbian Enameling and Stamping Co., Inc.*, No. 229, October Term 1938, and requests this Court to consider the arguments in certain portions of that petition as applicable to its petition in this case (p. 18 of the petition).

A comparison of the facts in the *Columbian Enameling* case with the facts in our case will easily demonstrate that the facts of the two cases are not at all similar.

It appears from the opinion of the Circuit Court of Appeals which decided the *Columbian Enameling* case that the *ratio decidendi* was equitable estoppel and the doctrine of unclean hands, which rules of equity the court held applicable to the acts of the complaining employees in this case.

In our case equitable estoppel and the doctrine of unclean hands play no part in the decision of the court. Rather the court grounds its decision, in part upon the lack of any substantial evidence to support the order of the Board, and in part upon a rule of law always enforced

by courts of law, namely, that where an employer-employee relationship is created by contract and the employee commits a breach of a substantial provision of that contract, he may be discharged.

A further prominent point of difference between the two cases is that in the *Columbian Enameling* case the Board has contended that the respondent therein had violated its contract (p. 22 of said petition). In our case respondent fully performed its contract with the complaining employees and neither the complaining employees nor the Board have ever contended to the contrary.

The two cases are essentially different both as to facts and as to decisive rules of law applicable to each of them.

The Decision Below Is Right.

The court below held that there was no substantial evidence to support the Board's order against the respondent. Its holding is based upon findings of evidential facts by the Board which compel that holding and with which any other holding is inconsistent.

The court also held that:

"While the statute creates new and important rights for labor, it does not abrogate the correlative rights of the employer." (R. 611.)

In enforcing the obligations of respondent's contract with the M.E.S.A. The court below applied in this, a labor case, the same rule of law that has always been applied by this Court in litigation involving the rights of parties to valid contracts.

"The principle which controlled the decision of the cases referred to rests upon a solid foundation of reason and justice. It regards the sanctity of contracts. It requires parties to do what they have agreed to do."

Dermott v. Jones, 2 Wall. 1.

"The principle deducible from the authorities that if what is agreed to be done is possible and lawful it must be done. * * * It is the province of courts to enforce contracts—not to make or modify them. Where there is neither fraud, accident, nor mistake, the exercise of dispensing power is not a judicial function."

The Harriman, 9 Wall. 161.

"The general rule is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts."

Twin City Pipe Line Co. v. Harding Glass Co.,
U. S. 353, at 356.

The National Labor Relations Act was designed for the purpose of promoting collective bargaining.

Agreements voluntarily entered into between employers and employees have been one of the greatest stabilizing influences in the field of industrial relations.

Agreements between employers and employees have been efficacious in preserving industrial peace for the reason that they have been mutually enforceable in the courts.

The argument of the petitioner in this case, if upheld, would make of the respondent's contract a "scrap paper." It would destroy the bargain which the respondent made with its employees. It would destroy the employee's respect for their own agreement. It would provide a valid reason for the refusal of all employers to enter into contracts with their employees. Such was not the purpose of the National Labor Relations Act. The decision of the court below is consistent with the purposes of the National Labor Relations Act.

CONCLUSION.

Respondent normally employs from 35 to 50 men. The order of the Board involves an award of back pay to 47 men from September 3, 1935.

These men when employed by respondent flatly refused to perform their services for the unexpired six (6) months' period of their contract with respondent.

Upon that refusal, after repeated negotiations, over a two (2) months' period, that left the positions of the parties diametrically opposed, respondent exercised its rights under the contract and obtained a new working force in pursuance of an *honest* opinion that it had the right to do just that. The Board found that the *impelling motive* was not to accomplish any purpose violative of the National Labor Relations Act.

When an employer and his employees have entered into a contract there can not be one rule of law for the employer and another rule for the employees. The Act grants certain rights to employees. It nowhere takes from the employer his correlative rights. It nowhere takes from an employer the right to insist upon performance of a valid agreement. Neither does the Act anywhere provide that employees may violate their contracts with impunity.

The Act compels employers to enter into negotiations with their employees looking toward a contract. The National Labor Relations Board and the Courts which administer the Act should compel the parties to such contracts to keep them. Otherwise the contracts are useless and the purpose of the Act will have been wholly destroyed. The order of the Board in this case, if enforced, would have destroyed respondent's contract at the instance of the employees who had broken that contract. The court below enforced the obligations of the contract and in so doing it was right.

It is therefore respectfully submitted that the petition
for writ of certiorari should be denied.

HARRISON B. MCGRAW,
WELLES K. STANLEY,
HARRY E. SMOYER,

Counsel for Respondent.

REPORT OF THE BOARD OF DIRECTORS

FOR THE YEAR 1910

THE CLEVELAND TRADING COMPANY

INCORPORATED

WYOMING COMPANY, INCORPORATED IN THE STATE OF OHIO
CORPORATE RECORDS AND THE STATE OF OHIO

REPORT OF THE BOARD

ELMER A. BROWN,

WILLIAM K. BROWN,

Union Commercial Building,

Cleveland, Ohio,

Attorneys for Respondent

INDEX.

Proceedings Before the Board.....	2
In the Court Below.....	2
Summary of Argument.....	4

ARGUMENT.

<i>Point One.</i> Upon the evidential findings of the Board and the admitted facts the Court below rightly held that respondent did not discharge the Complaining Employees because they were members of the MESA and had engaged in concerted activities for the purpose of collective bargaining.....	7
A. Respondent's dealings with MESA previous to the contract of June 15, 1935.....	9
B. Negotiation of the June 15, 1935 agreement....	10
C. Respondent's dealings with MESA after the contract of June 15, 1935.....	13
1. No agreement was made between respondent and the MESA on August 21st, 1935.....	17
D. Respondent's acts after August 21st, 1935....	18
E. The Board found that respondent was honest in its interpretation of the contract.....	21
F. Respondent had sustained heavy losses.....	21
G. The Board found that respondent's impelling motive was to cut operating costs.....	21
H. There is no finding that respondent ever refused to employ MESA members who were willing to work for respondent under the rule of departmental seniority set forth in their contract with respondent	22
I. The MESA suspended all of its members who were reemployed by respondent after September 3, 1935	23

J. The Board found that further negotiations would have accomplished nothing	23
K. The foregoing evidential findings of the Board and admitted facts completely sustain the conclusion of the Court below that respondent did not discharge the Complaining Employees because they were members of the MESA and had engaged in concerted activities for the purpose of collective bargaining	24
L. The attempts of the Board to sustain said finding by argumentative matter in its decision demonstrate the complete lack of any substantial evidence to support it.....	25
1. Respondent was not required to convince the Board that the old men would be inefficient when transferred to the machine shop.....	25
2. The Government's claim as to a general wage reduction is a "straw man".....	26
3. The Board made an unconscionable inference from two June conversations and erroneously found that one of them had occurred late in July	29
M. The Government's attempt in Point II of its brief to sustain said finding, when considered in the light of the evidential findings of the Board and the admitted facts, demonstrates again the complete lack of any substantial evidence to support it	33
Summary of Point One.....	38
<i>Point Two.</i> Upon the evidential findings of the Board and the admitted facts, the Court below rightly held that after August 21, 1935, it was lawful for respondent to terminate negotiations, fill the places of the Complaining Employees and to discharge them	39
A. An impasse was reached between the parties on August 21, 1935.....	40
1. The Government has materially changed its position	40

2. The Board failed to give effect to the difference between negotiations looking toward the making of a contract and negotiations to secure performance of a contract already made	41
3. No alternative course of action was open to respondent after August 21st except that it waive a substantial provision of its contract	44
4. The evidential findings of the Board show all the elements of an impasse.....	45
5. The Government's attempt to explain away the impasse reached on departmental seniority by suggesting that respondent might have raised other issues is beside the point..	48
B. There was a willful refusal after repeated conferences by the Complaining Employees to render their services in accordance with the contract	51
C. The breach of contract by the Complaining Employees was cause for their discharge.....	54
D. The breach of contract was material.....	55
1. By passage of the Act Congress intended to encourage the making of contracts through the process of collective bargaining between employer and employees. It did not take from such contracts any of their ordinary and usual incidents including the right to discharge for the willful breach thereof.....	56
Summary of Point Two.....	59
Point Three. Upon the evidential findings of the Board and the admitted facts the Court below rightly considered respondent's acts after August 21st in the light of the then status of the Complaining Employees against whom respondent had cause for immediate discharge. When so considered respondent's acts show no violation of the Act.....	59
A. Respondent did not violate the Act when on August 26th or 27th it negotiated an agreement with the A. F. of L. Machinists' Union.....	60

1. Respondent had the right to hire new employees to fill the places of the MESA.....	60
2. Respondent had the right to discharge the MESA employees	61
3. Respondent's right to hire new employees included the right to make a contract for their services	62
4. Respondent rightfully dealt with A. F. of L.	63
5. There was no waiver or condonation of the breach of contract.....	63
6. The MESA employees were not injured by respondent's dealings with A. F. of L.....	64
7. The A. F. of L. contract was cancelled September 10, 1935.....	65
B. Respondent's individual dealings with the four "old" men did not violate the Act.....	65
1. They were sent for after the contract with A. F. of L. was negotiated. They made no voluntary applications	65
2. They were selected because of their skill....	66
3. It was not a violation of the Act to negotiate with them individually.....	66
4. Respondent's suggestion of A. F. of L. membership to two of them did not violate the Act	68
(a) The Board's finding that A. F. of L. membership was made a condition prerequisite to their reemployment is not supported by substantial evidence.....	68
(b) Respondent's contract with A. F. of L. provided for a preferential shop and such contracts are lawful.....	69
(c) There is no finding that Pansky and Linsky would have accepted reemployment except for such requirement.....	70

(d) It was not within the issues and does not inure to the benefit of the other 45 employees	70
C. The Board's finding that on September 4th Potter asked respondent to meet with the MESA committee is arbitrary. However, even if the finding be accepted, respondent did not violate the Act in refusing to meet with either Potter or the committee.....	71
1. The finding is arbitrary.....	71
2. It was not a violation of the Act to refuse to meet with Potter.....	73
Summary of Point Three.....	77
The Errors Assigned Are Not Well Taken.....	78
The Board's Order.....	79
Conclusion	81

TABLE OF AUTHORITIES.

Cases.

<i>In the Matter of American Manufacturing Concern and Local No. 6 Organized Furniture Workers</i> , 7 NLRB No. 92, p. 11, decided June 7, 1938.....	77
<i>The Associated Press vs. National Labor Relations Board</i> , 301 U. S. 103, 81 L. ed. 953, 57 S. Ct. 650. .54, 56	
<i>In the Matter of Clifton Wright Hat Co. and United Hatters of North America</i> , Local No. 1, Vol. II, N. L. R. B. (Old), 452.....	47
<i>Consolidated Edison Co. etc. et al. v. National Labor Relations Board</i> , 83 L. ed. Adv. Ops. 131.....	
.....3, 32, 56, 63, 79	
<i>Federal Trade Commission v. Curtis Publishing Co.</i> , 260 U. S. 568, 43 S. Ct. 210, 67 L. ed. 408.....	3, 4, 32

<i>Insurance Co. v. Piaggio</i> , 16 Wall. 378.....	24
<i>International Shoe Co. vs. Federal Trade Commission</i> , 280 U. S. 291, 50 S. Ct. 89, 74 L. Ed. 431.....	43
<i>Jeffery-Dewitt Insulator Company vs. N. L. R. B.</i> , 91 F. (2d) 134.....	42
<i>Larkin v. Upton</i> , 144 U. S. 19.....	24
<i>National Labor Relations Board vs. Biles Coleman Lumber Co.</i> , 98 F. (2d) 18.....	43
<i>National Labor Relations Board vs. Carlisle Lumber Co.</i> , 94 F. (2d) 138.....	43
<i>National Labor Relations Board vs. Jones & Laughlin Steel Corporation</i> , 301 U. S. 1, 81 L. Ed. 893, 57 S. Ct. 615.....	3, 54, 58, 62, 67, 75
<i>National Labor Relations Board vs. Mackay Radio & Telegraph Co.</i> , 82 L. ed., Adv. Op., Oct. Term No. 17,861, 304 U. S. 333, 58 S. Ct., 904.....	61
<i>National Labor Relations Board vs. Remington Rand, Inc.</i> , 94 F. (2d) 862.....	43
<i>National Labor Relations Board vs. Union Pacific Stages</i> , 99 F. (2d) 153.....	32
<i>Nederlandsch, etc. vs. Stevedores & Longshoremen's etc. Association</i> , 265 Fed. 397.....	53
<i>Peninsular & Occidental S. S. Co. v. NLRB</i> , 98 F. 2d 411, Certiorari denied Dec. 12, 1938.....	47, 66
<i>Rentschler vs. Missouri Pacific Railroad Co.</i> , 126 Neb. 493, 253 N. W. 694, 95 A. L. R. 1.....	32
<i>Virginian Ry. Co. v. System Federation No. 40</i> , 300 U. S. 515.....	48
<i>Washington, Virginia and Maryland Coach Co. v. Na- tional Labor Relations Board</i> , 301 U. S. 142, 81 L. ed. 965, 57 S. Ct. 648.....	3, 32

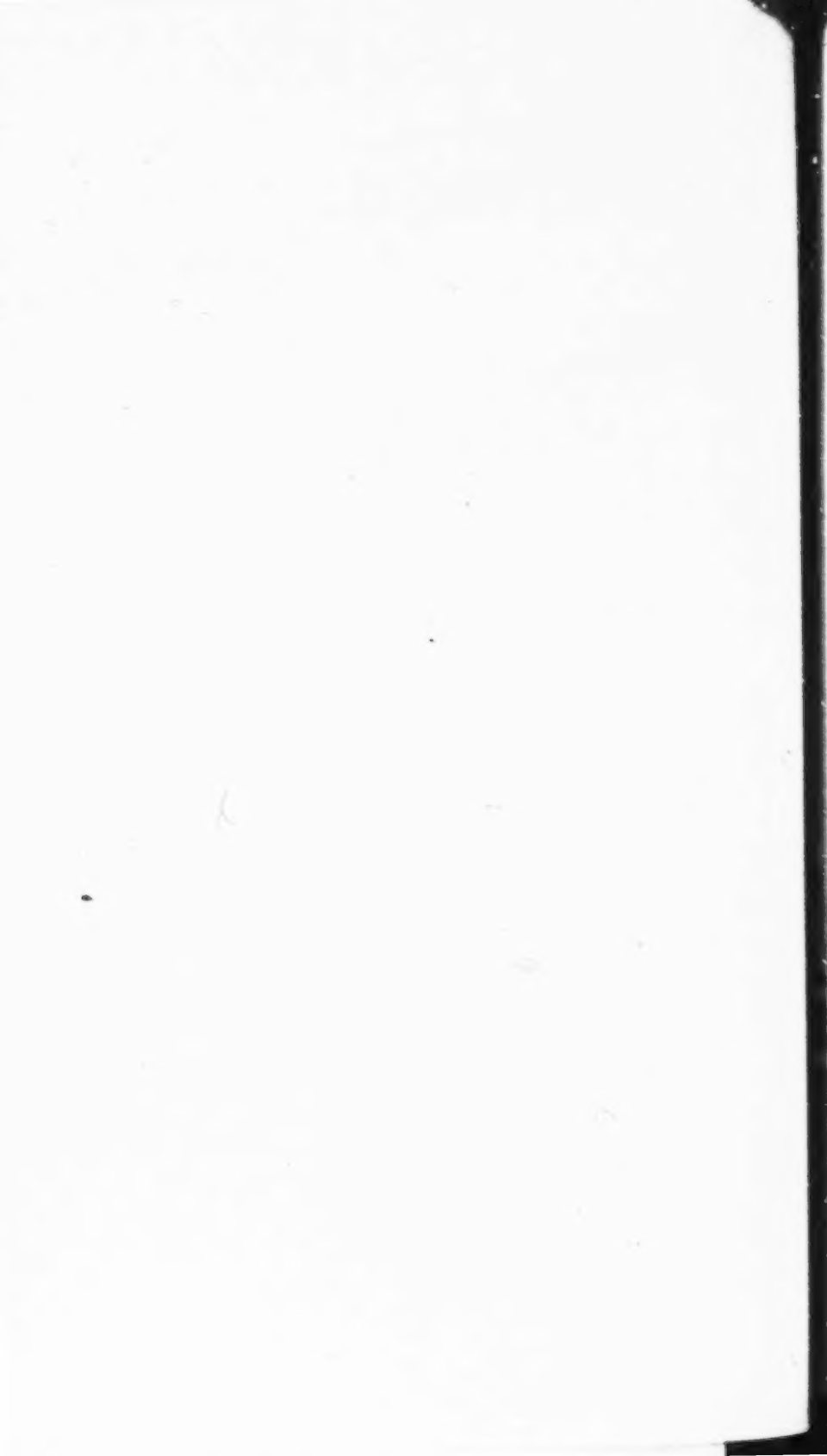
Senate Report.

Senate Committee on Education and Labor, Report No.
573, 74th Congress, 1st Session.....41, 57, 76

Statutes.

National Industrial Recovery Act, Section 7 (a)..... 46

National Labor Relations Act (Act of July 5, 1935, C.
372, 49 Stat. 449, U. S. C. Supp. III, Title 29,
Secs. 151 *et seq.*)..... 1 *et passim*



in the Supreme Court of the United States

OCTOBER TERM, 1938.

No. 274.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

THE SANDS MANUFACTURING COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SIXTH CIRCUIT.

RESPONDENT'S BRIEF.

The National Labor Relations Board, the Mechanics Educational Society of America, the International Association of Machinists District No. 54 affiliated with the American Federation of Labor, The Sands Manufacturing Company, and the National Labor Relations Act (Act of July 1935, C. 372, 49 Stat. 449, U. S. C. Supp. III, Title 29, Sec. 151 *et seq.*), respectively will be hereinafter referred to as the Board, the MESA, the A. F. of L., the respondent, and the Act. Those of respondent's former employees who were members of the MESA will be referred to as the complaining Employees.

PROCEEDINGS BEFORE THE BOARD.

Upon the complaint charging violations of Section 8, subsections 1, 3, and 5 of the Act (R. 7), respondent's answer alleging negotiations to an impasse to secure performance of a contract and breach of contract as a defense (R. 11) and the evidence (R. 100-583), the Board's Trial Examiner in an Intermediate Report (R. 42-62) found that respondent had violated Section 8, subsections 1 and 3 of the Act, but not Section 8 (5) and stated that because, in his opinion, for much of the difficulty the Complaining Employees themselves were responsible, he recommended their reinstatement *but without back pay*. (R. 62.)

Respondent filed a brief and made an oral argument before the Board in support of its Exceptions (R. 63-99), but the Board arbitrarily denied to respondent and its counsel the right to be present at and to hear and reply to such argument as was made before the Board by the Board's counsel, the Board announcing at the conclusion of respondent's argument that the Board would hear the Board's counsel in the absence of respondent and its counsel, to which respondent duly excepted. (R. 619.)

The Board arbitrarily disregarded respondent's Exceptions. In its findings of fact and conclusions of law and order, it held that respondent's contract with the Complaining Employees and their alleged breach of it were immaterial and irrelevant, and that respondent had violated Section 8, subsections 1, 3, and 5 of the Act, and it ordered reinstatement of forty-seven (47) former employees with back pay from September 3rd, 1935, which back pay at the present time probably amounts to more than \$100,000.00.

IN THE COURT BELOW.

To the Board's petition for enforcement filed April 12, 1937 (R. 615) respondent filed its answer and cross-petition for review (R. 619), to the latter of which the Board filed no reply.

In its cross-petition for review respondent alleged in detail that the Board had arbitrarily refused to find certain material facts; that certain findings made by the Board were arbitrary, and not supported by any substantial evidence; and that upon the evidential facts as they were found by the Board, and the admitted facts, its conclusions and its order were erroneous. (R. 619.)

As stated by the Court below (R. 610), the findings of the Board, if supported by evidence, are conclusive (Sec. 10-e of the Act).

But, as interpreted by this Court, the requirement is that the findings be supported by *substantial* evidence. *Federal Trade Commission vs. Curtis Publishing Co.*, 260 U. S. 568, 43 S. Ct. 210, 67 L. ed. 408; *Washington, Virginia & Maryland Coach Co. vs. National Labor Relations Board*, 301 U. S. 142, 147, 81 L. ed. 965, 969-970, 57 S. Ct. 648, 650; *Consolidated Edison Co. et al. vs. National Labor Relations Board*, 83 L. ed. Adv. Opinions, pages 131, 140.

In challenging the Board's findings of fact respondent did not attempt to circumvent these rules. Rather, respondent contended that because facts material to its defense of no violation of the Act were proven, either by uncontradicted evidence or by testimony adduced from the Complaining Employees themselves, the refusal of the Board to find said material facts thus proven was arbitrary and error and the order should be set aside. *National Labor Relations Board vs. Jones & Laughlin Steel Corporation*, 301 U. S. 1, 47, 81 L. Ed. 893, 917, 57 S. Ct. 615, 629.

Respondent also contended, in accordance with Section 10-(e) of the Act, that, upon the "pleadings, testimony and proceedings" set forth in the transcript, in the interests of justice, the Court below should examine the whole Record, ascertain for itself the issues presented and whether there were material facts not reported by the Board.

"Under such a review, the Commission's findings of fact are conclusive, if supported by evidence; but the Court may examine the whole record and ascertain

for itself whether there are material facts not reported by the Commission; and if there be substantial evidence relating to such facts from which different conclusions reasonably may be drawn, and the interests of justice clearly require that the controversy be decided without further delay, the Court has full power under the statute to do so without referring the matter to the Commission for additional findings."

Federal Trade Commission vs. Curtis Publishing Co., supra (Syl. 2).

The same rule was approved in *International Shoe Co. vs. Federal Trade Commission*, 280 U. S. 291, 297, 50 S. Ct. 89, 91, 74 L. Ed. 431, 440.

The Court below, upon the Board's findings and the admitted facts, by unanimous opinion held that respondent had not violated the Act. It set aside the Board's order, and dismissed the Board's petition to enforce. (R. 607.) 96 F. (2d) 721.

SUMMARY OF ARGUMENT.

The Board said:

"the case against the respondent is not in any way prejudiced if the stand of the shop committee . . . is considered a violation of the agreement." (R. 36.)

The Court below said:

"We disagree with this view." (R. 610.)

The fundamental and decisive question of law presented by this case is, did the contract between respondent and the Complaining Employees impose upon the latter an obligation to render their services to respondent during the term thereof in accordance with its provisions?

During the term of its second contract with the Complaining Employees, made during the second year of its dealings with MESA, respondent abrogated said contract, filled the places of the Complaining Employees, and dis-

charged them. From the evidential findings of the Board and the admitted facts it is clear that the union membership of the Complaining Employees was not the cause of their discharge. Rather, respondent filled their places because, after negotiating with them for two months in an unsuccessful effort to induce them to withdraw their refusal to permit respondent to operate its plant "by departments" in accordance with its contract with them, they told respondent on August 21, 1935, it could shut down its plant, but that it could not give effect to the rule.

The complaint charged that respondent had violated Section 8, subsections 1, 3, and 5 of the Act by its acts subsequent to August 21st. (R. 7.) The respondent justified said acts by alleging negotiations to an impasse to secure performance of their contract by the Complaining Employees, and their breach of contract. (R. 11, 16-23.)

The Board held that whether or not the Complaining Employees had broken their contract was immaterial and irrelevant and, therefore, did not decide whether or not there had been a breach of the contract. (R. 36.) It made its evidential findings of fact, and its conclusions of law and fact on that basis.

Respondent contends that because the complaint is based upon respondent's acts after August 21st, which acts were a continuous progressive course of conduct begun after that date, the motivating cause for said acts must be determined from the admitted facts concerning, and the evidential findings which the Board made from, the events which transpired on August 21st and theretofore.

Respondent contends that respondent's acts after August 21st must be considered in the light of the true motivating cause for said acts, and that, because the Board found respondent was honest in its interpretation of the contract (R. 36), its impelling motive was to obviate needless expense (R. 36), and the employees were adamant in their refusal (R. 37) on August 21st, it was arbitrary for

the Board to refuse to consider respondent's acts after August 21st in the light of these facts, and to hold that the breach of contract was immaterial.

The respondent's rights and its obligations toward the Complaining Employees after August 21st depended on whether or not they had broken their contract.

The Board could not properly decide whether or not an impasse had been reached on August 21st without deciding whether or not the position of the Complaining Employees was in violation of the contract.

The elements of an impasse in negotiations to secure performance of a contract and of an impasse in negotiations looking toward the making of a contract are different. They give rise to different rights.

Respondent was not required to negotiate to secure performance of a contract already made to the same extent that another employer is required to engage in negotiations looking toward the making of a contract. Certainly if the contract imposed upon the employees an obligation to perform, respondent's obligation to negotiate to secure performance was fulfilled by approximately two months of sincere negotiations.

Respondent's rights and its obligations toward the Complaining Employees after August 21st depended also upon whether or not they had given cause for discharge, whereas, the Board held that the rights of the Complaining Employees were the same regardless of whether or not they had given cause for discharge.

We contend that the contract and the breach of it were material and relevant and that because the Board's findings of ultimate fact were based upon an erroneous conception of respondent's rights, they are in themselves erroneous and the order was properly set aside by the Court below.

Therefore, Point One of this brief is devoted to showing from the evidential findings of the Board and the admitted facts that the union membership of the Complaining

Employees was not the cause for respondent's acts after August 21st. Point Two is devoted to showing that the impasse and the employees' breach of their contract was the cause for said acts. Point Three is devoted to showing that when respondent's acts after August 21st are considered in the light of their motivating cause as shown in Point Two and the rights of the Complaining Employees and the respondent with reference to each other resulting from the impasse and the breach of contract, there was no violation of the Act which justified the Board's order against the respondent.

The assignments of error and the Board's order are discussed following Point Three.

The Government charges the Court below with honoring section 10 (e) of the Act with "lip service" only. (G. Br., 47.) The evidential findings of the Board and the admitted facts hereinafter cited will show the Government's charge to be unfounded and unfair, a potent illustration of the arbitrary and unreasonable action of the Board concerning which respondent complained in the Court below.

A R G U M E N T.

POINT ONE.

UPON THE EVIDENTIAL FINDINGS OF THE BOARD AND THE ADMITTED FACTS THE COURT BELOW RIGHTLY HELD THAT RESPONDENT DID NOT DISCHARGE THE COMPLAINING EMPLOYEES BECAUSE THEY WERE MEMBERS OF THE MESA AND HAD ENGAGED IN CONCERTED ACTIVITIES FOR THE PURPOSE OF COLLECTIVE BARGAINING.

The Government admits this to be the main and decisive issue in this case. (G. Br., p. 40.)

The foundation intended to support the Board's order is its following finding of ultimate fact:

"The whole conduct of the respondent leaves no other reasonable inference than that the old employees were locked out, discharged and refused employment

because they were members of the Mechanics Educational Society of America and had engaged in concerted activities for the purpose of collective bargaining." (R. 38, 39.)

Contrary to the Board, the Court below held:

"In this case no evidence appears that the employees were discharged because of their membership in the MESA or any union." (R. 613.)

In its opinion the Court below, after stating the facts, stated its rule of decision as follows:

"The findings of the Board as to the facts, if supported by evidence, are conclusive. The Court may not, by substituting its own conclusions, reverse the Board's findings unless the evidence affords no reasonable basis for them. *Agwilines, Inc. vs. National Labor Relations Board*, 87 F. (2nd) 146, 151 (C. C. A. 5). The contention here is that the Board refused to make certain findings supported by the evidence, and that its conclusions either are based on no evidence, or are contrary to the Board's own findings of fact. The facts for the most part are not in dispute, and the principal question is whether the Board's findings, taken together with the admitted facts, compel a different conclusion." (R. 610.) (Emphasis ours.)

What were the Board's findings and the admitted facts which compelled the Court below to come to the conclusion stated above?

We will follow the statement of the Court below as to the facts. We will support said statement, and any explanatory additions to said statements, either with citations to the Board's findings, to evidence given by the Complaining Employees themselves, or to uncontradicted evidence given by respondent's witnesses. The statements of the Court below will appear in quotations.

A. Respondent's dealings with MESA previous to the contract of June 15, 1935.

The uncontroverted facts show no attempt whatever on the part of respondent to prevent organization of its employees or to discourage their affiliation with the MESA or interference after they had organized. There is no evidence whatever of espionage or coercion practiced by respondent.

On the other hand, the evidential findings show that respondent afforded to all the Complaining Employees, at all times while they were employed by it, all of their rights under Section 7 of the Act.

"Early in 1934 practically all of the employees joined the MESA and designated three of their number as a committee to represent them for purposes of collective bargaining." (R. 28, 608.)

The organization of respondent's employees was without any opposition on the part of respondent whatsoever. (R. 127.) In fact, respondent encouraged its employees to organize by stopping its factory during working hours so as to permit them to do so. (R. 407, 408.)

"No question is raised as to the committee's authority. Respondent immediately recognized and conferred with the shop committee whenever requested to do so." (R. 29, 128, 608.)

"The parties operated under a mutual agreement for increase in wages from May 2, 1934, until May, 1935." (R. 29, 598, 608.)

"In the fall of 1934 the MESA agreed that respondent could hire additional workmen to fill a projected Government order, on condition that it discharge such additional men when the order has been completed. This promise was carried out by the management. Practically all of the men newly hired became members of the MESA, and respondent in no way opposed this membership." (R. 29, 608.)

Throughout the entire year from May, 1934 to May, 1935, respondent negotiated with the MESA and the latter never had any trouble securing meetings with respondent. (R. 129, 613.)

"In May, 1935 the shop committee asked for a wage increase, and when this was denied, called a strike on May 21, 1935. Negotiations continued during the strike, and an oral agreement was entered into under which the strikers returned to work on June 3, 1935, but struck again on June 6th, because respondent had refused to reinstate seven of the strikers. Respondent claimed that these men were inefficient, and Potter, representative of the MESA, said that several of them might be incompetent." (R. 29, 30, 138, 164, 608.)

The committee agreed that some of them were not competent workmen but took the position that the company had to prove it. (R. 269.)

One of them, Norman, was later discharged for inefficiency with the consent of the shop committee. (R. 35, 425.)

"Further negotiations were held, and the contract of June 15, 1935, resulted. It was drafted by the shop committee of the MESA, certain changes being made at the insistence of respondent. The contract provided for an increase of wages, for the discharge of certain employees objected to by the shop committee, and otherwise regulated the conditions of employment. The employees, including the seven whom respondent wished to discharge, then returned to work." (R. 30, 155, 277, 289, 575, 576, 600, 608, 609.)

By its terms said contract was to remain in force until March 1, 1936. (R. 600.)

B. Negotiation of the June 15, 1935 agreement.

At the time of the organization of respondent's employees by the MESA, Potter had been employed by

respondent and became a member of the shop committee. (R. 29.) Later in 1934, he left respondent's employ and became State Chairman of the MESA. (R. 29.)

Potter last participated in negotiations with the respondent on May 30th or May 31st, 1935. He was not a member of the shop committee, nor present in the negotiations by which the second strike, which occurred June 6, 1935, was settled. (R. 147, 148.) From that time all negotiations were handled by the shop committee without Potter. (R. 31, 158.) By the terms of the contract of June 15, 1935, no one person could negotiate in behalf of the employees. (R. 603.) Because of the importance which the Board attaches to a telephone call by Potter on September 4, 1935 (R. 33) these facts are important.

"It had been respondent's practice when work was slack to transfer men from their regular departments to other departments." (R. 31, 611.)

When men were so transferred they continued to receive their regular wages, irrespective of their inefficiency in the department to which they were transferred. Wages of employees of respondent depended on length of service. (R. 31.) There was no piece work in respondent's plant. (R. 488.)

"Respondent considered this practice inefficient, and therefore, when the contract was being negotiated, it insisted that the words 'and by departments,' at the end of paragraph (5), be inserted. The express purpose was that respondent might discontinue the practice of calling old men back except to their own departments, and members of the shop committee testified in effect that it was intended to enable respondent to 'run by departments.' " (R. 34, 574, 575, 576, 579, 289, 291, 365, 611, 612.)

The word "only" was also inserted in paragraph (6) at the instance of respondent. (R. 612.) (Compare R. 603, an early draft of said contract, with R. 600, the final draft.)

"Paragraphs (5), (6), and (7) of the contract, which are the portions in controversy, read as follows:

"(5) That when employees are laid off, seniority rights shall rule, and by departments.

"(6) That when one department is shut down, men from this department will not be transferred or work in other departments until all old men only within that department, who were laid off, have been called back.

"(7) That all new employees be laid off before any old employees, in order to guarantee if possible at least one week's full time before the working week is reduced to three days.'" (R. 600, 611.)

Some of the testimony of the members of the shop committee as to their understanding of the agreement is cited under respondent's first and second exceptions to the Intermediate Report. (R. 63-67.) Typical of such testimony is the following:

"A. You mean you would transfer from those departments?

Q. Yes.

A. You couldn't do that.

Q. The committee agreed to that?

A. Yes, sir." (Jindra, R. 576.)

"A. That is going against your contract. You have seniority in the contract, and when they work, they stayed and died there." (Jindra, R. 579.)

* * * * *

"Q. That would be against that rule, wouldn't it? Let us be fair.

A. When employees are laid off, seniority rights shall rule." (It will be noted that the witness quoted only a portion of clause 5 above.)

"Q. Go ahead.

A. That is as far as I will go." (Moraco, R. 280.)

Respondent's dealings with MESA after the contract of June 15, 1935.

"Shortly after the execution of the contract respondent posted in its plant a classification of its employees by departments and thus gave notice of its intention and desire to proceed under the contract." (R. 612, 170, 175, 206, 574, 579, 434, 518.)

The intended effect of the posting of the classification was admitted by a member of the committee. (Jindra, R. 574, 579.)

He testified that "it stayed that way, it was understood." (R. 574.) Important as this classification was, bearing directly upon respondent's good faith throughout his whole controversy, the Board arbitrarily refused to find that it was made and posted. (R. 70.)

Discussions between the shop committee and the respondent concerning the application of the rule of departmental seniority began when the men returned to work on June 17th. (R. 294, 297, 573.) They continued throughout July. (R. 289, 290, 291, 363, 387.) Meantime the respondent again "tried out" the old practice and again condemned it. (R. 290, 291, 371, 386, 387.)

"It is plain, however, that this" (transferring men from one department to another) "was done because of the insistence of the men and because of constant fear of strikes." (R. 289, 290, 291, 387, 612.)

Paragraph 20 of the agreement of June 15th was a constant threat to strike. It provided as follows:

"In case of a misunderstanding between the management and the employees, the committee shall allow the management forty-eight (48) hours to settle the dispute, and if then unsuccessful the committee shall act as they see fit." (R. 602.)

"By the middle of July respondent had filled the orders accumulated during the strikes, and after conference, the men in its tank heater department, with the exception of the foreman, were laid off, and the

plant was operated on a schedule of three days a week." (R. 30, 283, 609.)

The foreman of the tank heater department was an "old" man. (R. 215.) He was also the financial secretary of the MESA local. (R. 224.)

The plant went on three days per week, employing only the "old" men, pursuant to notice dated July 30th. (R. 221, 222, 518.) The committee insisted that the respondent lay off all "new" men and go on this shortened work schedule despite the fact that there was need for increasing the machine shop working force (R. 30, 31, 517), and despite the fact that this action was against the interest of the 4 "old" men and the 5 "new" men who were then employed in the machine shop and who could have continued work full time but for the action of the committee. (R. 560, 580.)

Respondent's machine shop is its key department. (R. 31.) In order to operate its plant efficiently it is necessary that respondent's machine shop be thirty days ahead of the remainder of its plant. (R. 374, 459.)

"Respondent wished to increase the force in the machine shop in order to prepare stock, and to employ for that purpose 'new' men experienced in machine shop work, instead of transferring 'old' men from other departments, claiming that the contract of June 15th entitled it to this method of operation." (R. 31, 284, 286, 371, 375, 609.)

In the contract of June 15, 1935, the 31 men who were employees of the respondent prior to the Government order of 1934 were designated as "old" men and those employed while the Government order was being filled were "new" men. (R. 30.) Thus the "new" men were all former employees temporarily laid off.

"At this time a number of the machine shop employees were members of the International Association of Machinists affiliated with the American Federation of Labor." (R. 32, 609.)

"The shop committee contended that under the contract no new men could be hired for the machine shop so long as old men in other departments of the plant were not employed." (R. 31, 371, 609.)

This position was taken for a purely selfish motive of the old men who made up the shop committee (R. 597), and without regard for the rights of the "new" men who could have immediately been put to work, had the shop committee been fair to "new" men. Pansky testified that the committee had no objections to putting "new" men in the machine shop as long as the old twenty-nine worked. (R. 376.)

Repeated conferences were held between the management and the shop committee in reference to this matter. The management claimed that the shop committee was insisting upon a violation of paragraph (5) of the agreement. (R. 31.)

The views of the employer and the employees were diametrically opposed, both as to the meaning of the contract, and as to whether respondent should hire "new" men for the machine shop. (R. 31, 386, 423, 428, 609.)

That the position taken by the committee was wilfully in violation of the contract and of their own interpretation of the meaning of paragraph (5) thereof is attested by the testimony of the members of the committee who testified on the subject (Moraco, R. 289, Jindra, R. 574, Pansky, R. 365), some of which is quoted above. Pansky, a member of the committee, testified as follows:

"Q. By departments. I am going to leave it to you to tell me what you thought that meant?

A. Well, according to the contract, I understand the contract to read when it means seniority by departments you have newer men laid off, than the older men.

Q. In particular departments?

A. No new men.

Q. Not to be shifted from one department to another but each department to be filled up by men who had seniority rights; that is what you thought?

A. Yes." (R. 365.)

The Board arbitrarily refused to find that the members of the shop committee understood the contract to provide for departmental seniority (R. 63), although it is plain that such was their understanding. This becomes important as tending to show that the later action of the committee was arbitrary and in wilful violation of their own understanding of the agreement.

"The discussions were held at frequent intervals until August 19, 1935, when the shop committee was asked by the management to consult with the men and report whether they desired that the working force in the machine shop should be increased by new men while other departments were temporarily shut down, or that the whole plant should be temporarily shut down. The committee stated that it preferred that the plant be shut down. Respondent closed its factory on August 21st." (R. 31, 32, 609.)

The exact nature of the committee's reply on August 21st to respondent's request of August 19th that the committee go back to the men to see if they could find a "solution to the problem" (R. 431, 433, 519, 570), is more illuminating than the evidential finding of the Board just cited. Pansky, a committeeman, admits that Garry Sands asked the committee for a "solution" of the problem on August 19th. (R. 570.) He also testified that at the August 21st conference the committee told the respondent:

"He could shut down for a couple of weeks if he preferred it, but he couldn't lay off the old men first." (R. 377.)

Jindra, another committeeman, testified to the same effect:

"We could see no way out, so we told the management to shut down the plant as agreed." (R. 572.)

That the MESA employees had all agreed to the committee's answer is attested by Pansky's testimony:

— "Q. And that was what you had been instructed to do by the men with whom you had talked out at the shop?

A. That was the men's choice." (R. 377.)

1. **No agreement was made between respondent and the MESA on August 21st, 1935.**

The Government states that a compromise agreement was reached on August 21st. (Br. pp. 20-23.) Nothing could be farther from the facts. Respondent did not want to shut down. It could always shut down without the consent of the committee. It wanted to operate its machine shop with machine shop employees and shut down the other departments which had been operating with old men on a three day per week schedule (R. 31), whereby even the committee admitted nothing was being accomplished. (R. 572.) The committee had been adamant in its position that the machine shop force could not be increased with "new" men while the "old" men in other departments were laid off. (R. 31.) The respondent asked the committee for a "solution" of the problem. (R. 570.) The committee's answer, after consulting with the MESA employees, was: "He could shut down for a couple of weeks if he preferred it, but he couldn't lay off the old men first." (R. 377, 572.)

Such evidence, coming from members of the shop committee, can mean only that the MESA employees had determined to unitedly persist in their adamant position against departmental seniority, and that, in view of paragraph 20 of the contract (R. 602), if respondent had recalled former employees to the machine shop and laid off the old men in other departments, there would have been an immediate commencement of strike activities. The MESA gave respondent an ultimatum, a choice between two

alternatives, neither of which, because of the contract, they had the right to impose upon respondent, and the respondent shut down. The Government calls that an agreement! An agreement the consideration of which was that the MESA would refrain from doing what they were already bound not to do by virtue of their contract, namely, strike.

D. Respondent's acts after August 21st, 1935.

The ultimate finding of the Board, to the consideration of which Point One of this brief is entirely devoted, is that the Complaining Employees were discharged and their places filled because they were members of the MESA and had engaged in concerted activity for the purpose of collective bargaining. (R. 38, 39.) Respondent's acts by which this was accomplished all took place after August 21st. On that date respondent last dealt with the MESA. (R. 32.) The motivating cause for respondent's acts after August 21st, which resulted in the abrogation of its contract with MESA, the discharge of the MESA employees and the filling of their places, must be found in the admitted facts concerning, and the evidential findings which the Board made from the evidence of, the events which transpired on August 21st and theretofore, and from subsequent admissions of the respondent, if any, as to the motivating cause for said acts. There is no evidential finding as to any such admissions and there were none. Respondent's acts after August 21st, therefore do not logically belong in this portion of this brief wherein not what was done after August 21st, but why it was done, is the matter under consideration.

However, for the sake of giving continuity to the factual picture and of better raising the issues we will at once set forth the events which transpired after August 21, 1935. We will reserve the discussion of the legal effect of respondent's acts which occurred subsequent to August 21st

Point Three in this brief. The events subsequent to August 21st follow.

"Shortly thereafter it" (respondent) "negotiated an agreement with the International Association of Machinists, affiliated with the A. F. of L., and sought experienced machinists through the Cuyahoga County relief organization." (R. 32, 586, 609.)

The negotiations with the International Association of Machinists took place on August 26th or 27th. There is not a syllable of testimony as to any previous contact by respondent with the A. F. of L. The agreement with the A. F. of L. was executed on or about August 31st and became effective September 3rd. (R. 32.)

"On September 3rd the respondent opened its machine shop, invited a number of its former machine shop employees, all members of the International Association of Machinists, to return to work, but filled other places in the machine shop with new men instead of calling old men from other departments of the plant." (R. 32, 609.)

The International Association of Machinists also supplied the respondent with new help. (R. 32.)

"Forty-eight men, all members of the MESA were not recalled. Respondent offered individual contracts to four of the old MESA men whom it wished to employ as foremen. To two of them the offer was made upon the condition that they join the International Association of Machinists." (R. 32, 327, 338, 381, 391, 449, 543, 609.)

After an evidential finding that the A. F. of L. membership was discussed with only two of the old men, and then only after respondent's plant was in operation with A. F. of L. workmen (R. 32, 33), the Board arbitrarily found as an ultimate fact that it was made a condition of employment for all four old men. (R. 39.) The error, corrected by the court below, is now admitted by the Government. (G. Br. 3.) These two discussions concerning union membership

occurred on September 4th, the day after respondent's plant reopened. (R. 32, 33.)

The Board found that on September 4th Potter, over the telephone, asked for a meeting with respondent, which the management refused. (R. 33, 34, 610.)

The MESA shop committee never communicated with respondent after August 21st, nor did it after that date and even during the trial evidence any intention to withdraw in the slightest degree from the position it had taken in reference to departmental seniority prior to that date. The Board arbitrarily refused to make this finding (R. 76), although the evidence in support of it is positive and un-denied. (R. 530.)

Beginning September 4th, the MESA picketed respondent's plant for a month during all of which time the respondent's plant continued to operate. (R. 34.) Shortly after the plant reopened on September 3rd three of the MESA employees applied for work and were reemployed by respondent. (R. 231.) They were promptly suspended for so doing by the MESA (R. 231) and no more applied for work during the picketing or until after all the places were filled. (R. 33, 535.)

The Board has treated respondents' acts after August 21st, 1935, by which it abrogated its agreement with MESA and obtained a working force that would comply with the rule of departmental seniority, without regard to respondent's motive and as a series of isolated, disconnected acts. However, the Board's evidential findings show these acts to be a consistent progressive course of conduct in pursuance of a lawful purpose, and of the same effect as if by one act the respondent, through their agent, the A. F. of L. Union, had hired a new working force, thereby displacing and discharging the Complaining Employees.

We now return to the statement of those evidential findings and admitted facts which prove conclusively that the Complaining Employees were not discharged because

they were members of the MESA and had engaged in concerted activities for the purpose of collective bargaining.

E. The Board found that respondent was honest in its interpretation of the contract.

The Board found specifically that respondent was honest in its interpretation of the contract. (R. 36.) It follows, therefore, that the respondent carried on the negotiations in absolutely good faith. The Board refused to interpret or construe the contract (R. 63, 64) but the construction put upon the contract by the Court below (R. 612) substantiates respondent's honest interpretation of it.

F. Respondent had sustained heavy losses.

The Board refused to find, although the testimony is uncontradicted, that during the year 1933 respondent lost \$20,000, that during the year 1934 respondent lost \$40,000, and that prospects for the year 1935 were that respondent would continue to lose money. (R. 532.)

G. The Board found that respondent's impelling motive was to cut operating costs.

The Board specifically found that the impelling motive of the respondent in insisting upon the enforcement of the rule of departmental seniority set forth in the contract was to cut operating costs. In its findings the Board states:

"Rates of pay in the respondent's plant depended on length of service and not on the nature of the work. Thus, when old men were transferred to any department, they continued to receive higher rates than younger men in the same department. We are inclined to believe that the *impelling motive* for the opposition of the respondent to transferring the old men to the machine shop instead of hiring new men lay in this fact. In fact, Garry Sands testified that after the shutdown of August 21st, he complained to Albert Farrell, one of the old men, about the unfairness of

transferring men receiving high wages to do work which could be done by men receiving much less." (R. 36.)

This motive is expressly admitted by the Government. (Gov. Br., p. 7.)

H. There is no finding that respondent ever refused to employ MESA members who were willing to work for respondent under the rule of departmental seniority set forth in their contract with respondent.

The Board found that the Complaining Employees would have struck rather than permit enforcement of the rule of departmental seniority. (R. 31, 37.) The rule was established by contract. (R. 31.) Before respondent should be penalized for replacing the MESA employees, in view of the long previous negotiations, they must show a tender of their services on the terms under which they had agreed to work. This the employees never did.

There is no finding that any of the Complaining Employees ever offered to perform their contract with respondent after August 21st, 1935, either individually or collectively. There is no evidential finding that respondent ever refused to hire any person solely because he was a member of the MESA.

Furthermore, none of the Complaining Employees were ever refused employment at a time when there were available jobs. The Board says:

"A few of the old men asked respondent for work after the plant reopened, but were told that their places were taken." (R. 33.)

There is no finding that all the places were not filled. The evidence is that all places were then filled. (R. 535.) Furthermore, it is uncontradicted that none of the MESA employees asked to be reemployed until about thirty days after the plant had reopened and after the picketing by the MESA had ceased. (R. 535.) That their places were then

The MESA suspended all of its members who were re-employed by respondent after September 3, 1935.

At least three MESA employees applied for reemployment while jobs were available after September 3, 1935, and they were reemployed. (R. 231.)

The reason that only a few of the MESA employees applied for reemployment, and then only after a lapse of thirty days after the plant reopened, was conclusively established to be because the Mesa adopted a policy of suspending any member who went to work for respondent after September 3, 1935. In fact, the three of them who were reemployed were immediately suspended. (R. 230, 231.) Although this finding was arbitrarily refused by the board (R. 76), the fact was admitted by the secretary of the MESA union to which the employees belonged. (R. 230, 231.) It was not denied.

The Board found that further negotiations would have accomplished nothing.

The Board itself appraised the chances of the employees' committee ever agreeing with respondent that they should work under the rule of departmental seniority set forth in the contract. Its own finding as to what would have been the position of the committee if on August 21st, 1935 the respondent had told it that the Complaining Employees would be discharged unless they worked under the rule of departmental seniority was:

"It is inconceivable that the committee would have accepted this, especially since the men had been so successful when they struck a few months earlier." (R. 37.)

In other words, there would have been a strike. The board thus finds that it was useless to negotiate further.

K. The foregoing evidential findings of the Board and admitted facts completely sustain the conclusion of the Court below that respondent did not discharge the Complaining Employees because they were members of the MESA and had engaged in concerted activities for the purpose of collective bargaining.

In testing the "ultimate findings" of an administrative board with relation to its evidentiary findings the same test is applied as is applicable to testing a general verdict of a jury in relation to its special verdict or findings. In the latter case the rule is well settled that where special findings are irreconcilable with a general verdict, the former will control. *Larkin v. Upton*, 144 U. S. 19; *Insurance Co. v. Piaggio*, 16 Wall. 378.

Test this case by lifting from the evidence the wilful refusal of the Complaining Employees to work under the rule of departmental seniority set forth in the contract and what is left that is explanatory of respondent's acts? Respondent did not object to the organization of its employees into an outside union. It promptly recognized their union. It bargained with the union shop committee. It made two written contracts with them. It performed those contracts. It met with the shop committee whenever requested to adjust grievances. It was only after repeated conferences extending over a two months period, during all of which Complaining Employees continued to repudiate a substantial and material provision of their contract with the respondent, leaving the positions of the parties diametrically opposed and in a state where further negotiations were useless, that respondent abrogated its agreement and took those steps necessary to fill the places of the Complaining Employees with new men, and to discharge them. The employees' repudiation of their contract at a time when further negotiations would have been useless remains the only cause for their replacement.

In the face of its own evidential findings and the admitted facts set forth above, for the Board to say that "the whole conduct of the respondent leaves no other reasonable inference than that the old employees were locked out, discharged and refused employment because they were members of the MESA and had engaged in concerted activities for the purpose of collective bargaining" (R. 38, 39), is plainly arbitrary and capricious, totally unsupported by the evidence.

L. The attempts of the Board to sustain said finding by argumentative matter in its decision demonstrate the complete lack of any substantial evidence to support it.

In its decision the Board attempted by much argumentative matter to sustain its arbitrary finding of fact. Indeed, the total lack of any substantial evidence to support the Board's ultimate finding is accentuated by the fact, demonstrated by the Government's brief (pp. 40-49), that the finding is herein sought to be sustained by argument rather than by evidence.

1. Respondent was not required to convince the Board that the old men would be inefficient when transferred to the machine shop.

In its findings the Board says:

"No evidence of persuasive materiality was introduced by the respondent to substantiate the claim that the old men were unsatisfactory when transferred from one department to another. In fact, the respondent failed to put in evidence showing that any particular old men were inefficient when transferred." (R. 35.)

Here the Board again exceeds its powers. It does not take the contract as it finds it, as under the law it is required to do, but instead voids the contract for all practical purposes on the ground that the respondent did not prove that the old men would be inefficient when transferred from some

The Board refused to find, although conclusively established, that only six of the "old" men had ever been employed in the machine shop after May, 1934. (R. 75.) Of these six, four were regularly employed in it and the remaining two of the six had not worked in the machine shop for over a year. The remaining twenty-five or twenty-six "old" men had not worked in the machine shop for at least two years, if they had ever worked in it at all. (R. 433.) Obviously these "old" men would have been less efficient than regular machine shop employees.

However, it was no part of the respondent's case to prove the inefficiency of the "old" men when transferred out of their regular departments into the machine shop. Such arguments were behind it and disposed of when the employees made the contract with respondent providing for departmental seniority. The parties were bound by that contract.

Furthermore, the issue was over the machine shop. (R. 31.) The Board's finding as to production with "old" men in the tank heater department (R. 36) proves nothing with reference to the machine shop. When respondent convinced the Board that its impelling motive for insisting upon observance of the rule of departmental seniority was to obviate the necessity of transferring "old" men to departments other than their own and paying them higher wages than respondent would have to pay to "new" men usually employed in that department (R. 36), respondent established its purpose to be lawful and disassociated from any purpose to violate the Act in any particular. Insistence upon observing a lawful provision in a contract for the purpose of obviating needless expense and excessive costs violates no law.

2. The Board's claim as to a general wage reduction is a "straw man."

In its decision the Board says:

the duty devolved upon the respondent to advise the committee of the new offer. Instead, the respondent surreptitiously entered into negotiations to replace the MESA with a new set of men at lower wages, some of them belonging (in opinion of its secretary-treasurer) to a more conservative union. This conduct is not compatible with a sincere effort to bargain collectively with one's employees." (R. 38.)

This finding is based entirely upon conversations with the four or five "old" men after the A. F. of L. contract had been negotiated. (R. 32, 33.)

Even if the Board's statements in the above quoted paragraph were accurate, the theory of the argument behind them is unsound. Respondent broke with the MESA on the issue of departmental seniority. If respondent had changed its position with reference to departmental seniority there would be some force to the Board's argument. But Article V of the A. F. of L. agreement shows that respondent maintained the same position with the A. F. of L. which it had maintained with the MESA. (R. 588, 589.)

The Board's statement about a new general offer is false and misleading. There is no evidence of any new offer made to the employees generally. Respondent had no new offer to make to the MESA employees. They had refused to continue the operation of the plant under the rule of departmental seniority set forth in the contract. The Board specifically found that there was no new general offer:

"However, Hilliard J. Sands, who was present at these conversations, *admitted* in his testimony that Garry Sands told Pansky, Linsky, Dolish, and Ochs, the four men who were called back, *that the offer of reemployment was being made only to them and not to the rest of the old men.*" (R. 33.) (Emphasis ours.)

The Board's statement that the A. F. of L. agreement provided for lower wages is also less than the truth. Respondent's negotiations with the A. F. of L. began August

26th or 27th, *before* any conferences with the four or five old men. (R. 32.) The MESA employees had refused to abide by the rule of departmental seniority. (R. 31, 377, 572.) Respondent's former machine shop employees were largely A. F. of L. men. (R. 32.) The MESA did not represent them. (R. 236.) The A. F. of L. agreement contemplated the discharge of the MESA and the reemployment of the former A. F. of L. employees, called "new" men in the MESA agreement, and other absolutely new men. (R. 590.) Respondent rightfully made the best deal it could with A. F. of L. But the result was not lower wages. The A. F. of L. contract provided that the A. F. of L. men should receive the same hourly wage as when last employed, and that new employees were to receive the prevailing minimums in respondent's plant, and that all employees were to receive increases at stated intervals. (R. 590.) There were only twenty-nine old MESA men. (R. 597.) All other MESA men were "new" men receiving the same wages as the new A. F. of L. men had received. (Gov. Br. p. 45.) Respondent sometimes employed as many as 70 or 80 employees. The net result therefore of the A. F. of L. agreement was probably an increase in respondent's payroll.

Pansky testified:

"According to the management's viewpoint, why should he stick eighty-six cents an hour men on the job when he formerly paid forty-cents for new men." (k. 373.)

Aside from the fact that respondent objected to transferring "old" men at their high rates to the machine shop to do work which could be done by regular machine shop employees who received a lower rate (R. 36), the matter of a general reduction in wages is a "straw man." The Government "blows both hot and cold" at it. At one place in their brief, counsel say that "the testimony of respondent's officials makes it clear that reduction in wage rates, concomi-

ly effecting a reduction of operating losses, was the underlying source of the whole dispute." (Gov. Br. p. 25.) This statement is directly contrary to the Board's finding which we have just referred. (R. 36.) At another place their brief counsel say that "it is apparent that the wage of the MESA men was not the reason for their mass inaction." (Gov. Br. p. 45.) This statement is in accord with our contention since the commencement of this case. (R. 23.) Departmental seniority was the issue. (R. 36.) General wage rates had nothing to do with it. The Board so found (R. 36) and by that finding the Government was bound in this case.

In another material aspect the above quoted finding of the Board is clearly false. Garry Sands was the secretary-treasurer of respondent. (R. 106.) The "opinion of its secretary-treasurer" clearly refers to the opinion voiced by the respondent's superintendent (R. 38), Hilliard J. Sands, who was an officer of respondent company. (R. 106.) Garry Sands voiced no such opinion and there is no evidence to support the statement. We will discuss the shop superintendent's opinion directly.

The Board made an unconscionable inference from two June conversations and erroneously found that one of them had occurred late in July.

The Government's statements that the Court below ignored the Board's findings upon evidence that following the strikes in May and June respondent had evinced hostility toward the MESA command attention. (Gov. Br., pp. 10, 14, 13.)

To fill its need for evidence tending to show antagonism on the part of respondent toward MESA the Board relied solely upon two conversations, one between Hilliard and Rudd, and the other between McKiernan and Hilliard. The Board's inference from these conversations is arbitrary and unconscionable. (R. 28.)

The H. Sands-Rudd conversation took place not longer than ten days after June 17th, upon which date the employees returned to work after the second strike. (R. 218, 420.) The Board found that H. Sands, the shop superintendent, on that occasion said to Rudd, the MESA secretary, that "the management would rather have the International Association of Machinists than the MESA because the former was more conservative and did not call strikes often." (R. 38.) This statement, an expression of opinion by a subordinate, did not violate the Act. There was no evidence that it was voiced for the purpose of intimidation or coercion or that it had that effect. Furthermore, such a statement in June, immediately following two (2) strikes called three (3) days apart (R. 30) would be *too remote* to furnish a motive for respondent's acts in August. *Contrary to the evidence the Board adjusted the date in its findings by arbitrarily placing the conversation "late in July."* (R. 38.)

It is not unreasonable to believe that if the Board had permitted counsel for the respondent to be present at such oral argument as was made to the Board by the Board's counsel, from which argument respondent's counsel was barred by the Board and to which action of the Board respondent excepted (R. 619), such a prejudicial error would not have occurred.

In its brief, the Government does not admit the Board's very serious error as to the date of said conversation but adopts the device of stating both the Sands-Rudd and the McKiernan-Norman conversations without fixing the dates of their occurrence. (Gov. Br. p. 42.)

The McKiernan-Norman conversation took place June 26th. (R. 38.) McKiernan was the shipping clerk, Norman's boss. (R. 300, 503.) Being an inefficient employee, Norman had been passed around from foreman to foreman for the purpose of trying to find for him some job which he could perform efficiently. (R. 306.) After the June strike was settled, there was a conference and Norman was dis-

charged as completely incompetent and inefficient, and this with the approval of the shop committee. (R. 35, 425.) The Board found that in this conversation this shipping clerk had told this employee "not to worry, that he would be taken back as soon as respondent was rid of the MESA." (R. 38.) The shipping clerk denied that the MESA was mentioned in the conversation. (R. 504.) It was uncorroborated. Norman was one of several men refused reinstatement on June 26th all on the ground of inefficiency (R. 304, 309), which refusal caused the second strike. Norman's testimony (R. 298-313) indicated that he had been contemplating a claim of discriminatory discharge as he testified that "us men were to be on a charge of discrimination." (R. 311.) The fact was that the shop committee had agreed to his discharge but had never told him that fact. (R. 307.) Therefore he was hostile to the respondent and testified: "I think it was a grudge against me." (R. 302.)

The Trial Examiner, who saw and heard both Norman and McKiernan testify, did not believe Norman. In fact, neither of said conversations is mentioned in his Intermediate Report. (R. 42-62.) Counsel's footnote admitting McKiernan's denial, but stating that the Board believed Norman's statement to be true (Gov. Br. p. 42) serves only to emphasize the lack of any substantial evidence to support the finding under discussion and that the Board's finding was arbitrary.

However, the Board's action with reference to Norman speaks with much more force than its written inference concerning this conversation. If Norman's testimony was true, then Norman was surely being discriminated against. Certainly upon Norman's own case, the Board did not believe him. It did not include Norman's name in the list of those whom it ordered respondent to reinstate (R. 39) and thus the 48 Complaining Employees was reduced to 47.

We contend that these two June conversations, both of which ante-dated the Act, and neither of which took

place in July, are no evidence at all of the existence of any unlawful motive for respondent's acts late in August. Certainly they fall far short of being the *substantial* evidence required by the statute. *Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S. 568, 43 S. Ct. 210, 67 L. ed. 408; *International Shoe Co. v. Federal Trade Commission*, 280 U. S. 291, 74 L. ed. 431, 50 S. Ct. 89; *Washington, Virginia and Maryland Coach Co. v. National Labor Relations Board*, 301 U. S. 142, 147, 81 L. ed. 965, 969-970, 57 S. Ct. 648, 650; *Consolidated Edison Co., etc., et al. v. National Labor Relations Board*, 83 L. ed. Adv. Ops. pp. 131, 140. Furthermore, the inference sought to be drawn by the Board from these two June conversations is directly at variance with the Board's specific finding as to respondent's impelling motive for its acts in August. (R. 36.) Respondent's many meetings with the MESA in July and August, its proper impelling motive, and the honest opinion, which the Board concedes that Respondent had, that the MESA had wilfully repudiated their contract with it, completely dispel the inference arbitrarily drawn by the Board from these two June conversations. *National Labor Relations Board vs. Union Pacific Stages*, 99 F. (2d) 153, 177.

Furthermore, the charge was filed on behalf of 48 men. If respondent had committed any acts of hostility toward MESA as an organization, the Board would have been able to unearth some real evidence from these 48 men on that subject by November 25, 1935, the date the trial commenced, as to some act or acts nearer to August 21st, that would prove that hostility. That the Board neither found nor presented any such evidence certainly dispels any suspicion that may have been created by the two June conversations.

M. The Government's attempt in Point II of its brief to sustain said finding, when considered in the light of the evidential findings of the Board and the admitted facts, demonstrates again the complete lack of any substantial evidence to support it.

The Government's first contention is that because all MESA employees were discharged, they were discharged because they were all members of MESA. (Gov. Br., p. 41.) The question before the Board was, why were all MESA employees discharged? We submit that merely to state the problem is not to prove it. Respondent's dealings with MESA from April, 1934, through August 21, 1935, its two written contracts with MESA, the abrogation of the last written contract at a time when it still had six months to run, necessitate proof by evidence as to why was this done. The fact that they were all discharged does not prove why they were discharged.

The Government's second contention is that the MESA employees were peremptorily eliminated without any notification of any kind. (Gov. Br., p. 41.) The Board's evidential findings as to repeated conferences, diametrical opposing positions, and the committee's admitted wilful refusal to permit the departmental seniority rule to function (R. 31, 377, 572), destroy the adverb "peremptorily." The fact that on August 21st the respondent had posted the announcement: "The factory will shut down Wednesday night, August 21st, until further notice" (R. 351) did not obligate the respondent to notify the MESA employees of anything. They had refused to permit the respondent to operate its plant as it had a right to do under the contract. (R. 31, 377, 572.) The Board found that if respondent had attempted to operate under the contract, or, if the respondent had told them that the shut down meant that they would not be recalled, the MESA employees would have struck. (R. 37.) Even at the time of the trial, the

the departmental seniority clause, as we have shown above. If the Board, which did not see or hear the witnesses, could come to that conclusion as to that fixed determination of the committee, respondent is not to be blamed if it took a course of conduct based upon its similar belief that the MESA employees would continue to maintain that position. The notice of finality came from the MESA employees. (R. 377, 572.) Until a change from that position was communicated to respondent, it owed them no duty whatsoever.

Thirdly, the Government mentions the two conversations in June. (Gov. Br., p. 42.) We have already shown that the Board's inferences therefrom were arbitrary and unconscionable. (This Br. Point (L-3).)

Fourthly, the Government mentions respondent's dealings with the four "old" MESA employees. (Gov. Br., pp. 42, 43.) Respondent's acts after August 21st will be dealt with in Point Three of this brief. The inquiry here is as to the reason for its acts subsequent to August 21st. In this connection, however, we point out that the Government is completely mistaken as to time when it says that "prior to the reopening of the plant Garry Sands . . . advised them that they were the only ones whom respondent would take back," and that, "as respects two of the men, Linsky and Pansky, the offer was made upon condition that they drop their affiliation with the MESA and join the Machinists." (Gov. Br., pp. 42, 43.) The subject matter to which the Government refers was discussed only on September 4th, the day after the plant was reopened with A. F. of L. employees. (R. 379 and the Government's citations.)

Fifthly, the Government attempts to supplement the Board's findings of fact by a statement in its brief that Garry Sands "intimated" to Farrell that the MESA was trying to "break" him. (Gov. Br. p. 43.) The Board found no such fact. It allegedly occurred about August 28th. (R.

315.) Farrell's testimony was that Sands said "he didn't know whether the M.E.S. was trying to break him or not." (R. 316.) Sands denied making the statement. (R. 523.) Whether he did or did not was a question of fact for the Board. It made no such finding and the conversation is not mentioned in the Board's decision. It would seem to have no place in the Government's brief.

Sixthly, the Government mentions the Garry Sands-Hudak conversation. (Gov. Br. p. 43.) It is self-evident that the conversation took place after the complaint was filed on November 12, 1935. (R. 11.) Nothing violative of the Act appears in the quotation and the conversation is not mentioned in the Board's decision. However, the Government quotes only the latter portion of Mr. Sands' statement. The previous portion is:

"He came in there and he asked me for a job and I said, 'Mike, the plant is all filled up now.' I said, 'If you had come around right after the strike, right after we opened on September 3rd, you might have had an opportunity—I might have had an opportunity for you.' But I said, 'Now, the plant is all filled up and we don't need any men'." (R. 529.)

There is no finding by the Board that all available jobs were not filled and there is nothing violative of the Act in the conversation.

Seventh, the Government charges Garry Sands with a lack of understanding of and hostility to an employer's obligations under the Act. (Gov. Br. p. 44.) This generalization drawn by the Government is directly at variance with the following inferences which must necessarily be drawn from the evidential findings of the Board. 1st. The respondent was *friendly to organized labor*. Witness the circumstances under which its own employees organized. (R. 29.) Witness that when it broke with MESA it immediately contracted with another labor organization, the A. F. of L. (R. 23.) 2nd. Respondent believed in the ad-

justment of grievances by negotiations. (R. 29, 30, 31.) Witness also the lack of any finding that while the MESA employees were employed by respondent, it ever refused to meet with them or their committee. 3rd. Respondent *believed in written contracts* after collective bargaining with its employees. *It made two of them.* (R. 29, 30.) 4th. Respondent *believed that its obligations under such contracts should be performed by it.* Witness the lack of any finding that respondent in any wise failed to perform either of its contracts with MESA. 5th. Respondent *believed that once a contract was made with its employees, they should perform it.* (R. 31.) Surely, this was not a vice. 6th. Respondent was *honest.* (R. 36.) 7th. Respondent was *patient.* Witness the repeated conferences throughout the summer although they related to an issue which respondent honestly believed, and in fact was, settled by the contract. (R. 31.) 8th. Respondent's *impelling motive had nothing to do with unionism* but was to obviate needless expense. (R. 36.) 9th. Respondent did not interfere with, coerce, or spy upon its employees. ~ Witness the complete lack of any finding that it did.

The Government cannot contradict these facts and the testimony cited by it substantiates respondent's contention that only when Garry Sands came to the same conclusion as did the Board, namely, that it was inconceivable that the employees would change their position (R. 37) that he terminated the negotiations.

Lacking substantial evidence to support that point the Government next attempts to fortify the arbitrary conclusion of the Board. (Gov. Br. p. 44.) Substantial evidence would not have to be "fortified."

As a first attempt it states the fact that respondent attempted to re-employ four old MESA men. (Gov. Br. p. 44.) This was after August 21st and will be dealt with in Point Three, but it will be noted now that they were chosen because of their skill and for supervisory positions. (R. 543.)

The fact that they had belonged to MESA did not prevent respondent's sending for them.

Secondly, the Government states that the A. F. of L. seniority clause was similar to the position taken by the MESA during the conferences. It was not. The A. F. of L. contract made any departure from departmental seniority strictly at the discretion of the employer. (R. 588, 589.)

Thirdly, the Government urges respondent's alleged failure to discuss a new general wage rate with the MESA. (Gov. Br. p. 45.) We have already shown that the matter of a new general wage rate is a "straw man." The issue was departmental seniority. (R. 31.) The impelling motive was to obviate needless expense. (R. 36.) This argument that respondent should have tried to obtain from MESA a new lower general wage rate is completely impractical and every chance of its success is completely eliminated by the Board's evidential findings. The May, 1935 strike was called right after a 10% increase to "new" employees. (R. 601.) For almost two months respondent had striven by negotiations to secure performance of the rule of departmental seniority. (R. 31.) The Board found the employees would never have worked under the rule despite the fact they had already agreed to it. (R. 37.) And now the Government says respondent should have negotiated with that committee to obtain a reduction in the wages which the respondent was obligated to pay under the contract for six months thereafter! The Act does not require that respondent engage in negotiations which it knows are doomed to failure. Any person reading this Record would conclude that it would have been useless for respondent to have even suggested a general wage reduction to the MESA during the life of the contract. Besides, respondent did not desire a general wage reduction. It merely wanted to operate its machine shop with machine shop employees as it had a right to do and the record is clear that if the MESA

had permitted respondent to do so, there would have been no trouble whatever.

The Government's next argument is inconsistent with the previous one. It states that the wage scale of the MESA employees was not the reason for their elimination. (Gov. Br. p. 45.) We have never asserted it was. Respondent's position was set forth in its answer and general wage rates are not mentioned therein. Respondent's proof conformed to its answer. As far as concerns the 25 ^{new} employees who were members of the MESA and who were not recalled, they cannot escape responsibility for the authorized act of their committee. (R. 377, 572.)

Finally the Government cites our assertion that none of the MESA applied for reinstatement. (Gov. Br. p. 46.) The fact that none of them applied for reinstatement and that they picketed respondent's plant for a month (R. 34) is additional proof of the very point which the Board found, namely, that it was inconceivable that the employees would ever agree to work under the rule of departmental seniority. (R. 37.) They left the plant with that determination, they forced the shut down by that determination, and their every act subsequent to August 21st, including adherence to the same position at the hearing, manifested a continuing persistence in that determination. Respondent never promised to recall them to their former jobs. It just shut down. Until the employees changed their position and offered to return to work at the terms under which they had agreed to work, respondent, having already exhausted the possibility of agreement by weeks and weeks of negotiations, owed them no further duty.

SUMMARY OF POINT ONE.

Stated simply, there would have been no severance of relations between respondent and the MESA employees during the life of the contract if the Complaining Employees had not refused to permit respondent to operate

its plant in the manner in which it honestly believed it had a right to operate its plant under the contract. The evidential findings of the Board and the admitted facts when fairly considered show that said refusal, and that only, was the motivating cause for every subsequent act of the respondent.

The ultimate finding of the Board that the old employees were discharged because they were members of the MESA and had engaged in concerted activities for the purpose of collective bargaining is therefore not supported by and must give way before the evidential findings of the Board and the admitted facts which are controlling.

It follows, therefore, that the court below did not render "lip service only" to section 10(e) of the Act (Gov. Br. p. 47), but that it was right when it held:

"In this case no evidence appears that the employees were discharged because of their membership in the MESA or any union." (R. 613.)

POINT TWO.

UPON THE EVIDENTIAL FINDINGS OF THE BOARD AND THE ADMITTED FACTS, THE COURT BELOW RIGHTLY HELD THAT AFTER AUGUST 21, 1935, IT WAS LAWFUL FOR RESPONDENT TO TERMINATE NEGOTIATIONS, FILL THE PLACES OF THE COMPLAINING EMPLOYEES AND TO DISCHARGE THEM.

In Point One, from the evidential findings of the Board and the admitted facts, we have shown the motivating cause for respondent's acts after August 21st was not any purpose violative of the Act.

Herein we will show that after August 21, 1935, the respondent was lawfully entitled to abrogate its agreement with the MESA, terminate the negotiations, fill the places of the Complaining Employees and discharge them.

The evidential findings of the Board and the admitted facts show two valid and lawful reasons for respondent's acts after August 21, 1935. They are: first, the impasse;

and second, the breach of contract. We contend that the impasse justified the termination of negotiations and the breach of contract gave lawful cause for the discharge of all employees who were represented by the MESA shop committee.

A. An impasse was reached between the parties on August 21, 1935.

The Court below said:

"In view of the background, the uncontroverted facts as to the complete lack of any attempt to prevent organization or to discourage affiliation with the MESA, the want of espionage or coercion practiced on the part of the management, and the express findings of the Board as to repeated conferences, honest difference of opinion, and diametrical opposition of views, we think that only one conclusion can be drawn, namely, that the respondent sincerely attempted over a long period to negotiate with the MESA. When the men would not perform their contract an impasse arose. Respondent was not obligated to prolong the impasse and its refusal to bargain further did not constitute a violation of the statute." (R. 613.)

1. The Government has materially changed its position.

The Government has materially changed its position on the matter of the impasse since the decision of the Court below. The Board concluded, contrary to its own evidential findings, that no impasse was reached. (R. 37.) The Government contended in the Court below that no impasse was reached. (R. 617.) It now admits there was an impasse, but states that it was only temporary. (Gov. Br. p. 10.) The Government's position now is that respondent should be severely punished for failing to recognize and to distinguish between a temporary and a permanent impasse. We submit that the Government's attempt at classification is a significant admission in favor of the holding of the Court below.

- 2 The Board failed to give effect to the difference between negotiations looking toward the making of a contract and negotiations to secure performance of a contract already made.

Section 8 (5) of the Act makes it an unfair labor practice for an employer "to refuse to bargain collectively." The term is not defined in the Act. However, there is no doubt that Section 8 (5) was included in the Act chiefly to take care of the situation created by the refusal of an employer to recognize the representatives of the majority of his employees and to deal with them in an effort to arrive at a working agreement.

In its report recommending passage of the Act, the Senate committee said:

"The committee wishes to dispel any possible false impression that the Bill is designed to compel the making of agreements or to permit governmental supervision of their terms. It must be stressed that the duty to bargain collectively does not carry with it the duty to reach an agreement, because the *essence of collective bargaining* is that either party shall be free to decide whether proposals made to it are satisfactory. * * *

"It seems clear that a guarantee of the right of employees to bargain collectively through representatives of their own choosing is a mere delusion if it is not accompanied by the correlative duty on the part of the other party to recognize such representatives as they have been designated (whether as individuals or labor organizations) and to negotiate with them in a bona fide effort to arrive at a collective bargaining agreement." *Senate Committee on Education and Labor*, Report No. 573, 74th Congress, 1st Session, p. 12. (Emphasis ours.)

In the case at bar it is undisputed that the respondent did recognize the representatives and that it actually made two contracts with them, each of which was reduced to writing and signed by the parties, the latter of which was by its terms to be in full force and effect from June 1, 1935.

to March 1, 1936. (R. 600.) According to the Senate committee report the end sought by Section 8 (5) was attained when the contract of June 15, 1935 was negotiated and signed. Nevertheless, the Board in this case defined the respondent employer's obligation under Section 8 (5) of the Act even more stringently than the Senate committee defined the obligations of an employer in negotiations looking toward the making of a contract.

In its findings the Board says:

"It is hardly necessary to state that from the duty of the employer to bargain collectively with his employees there does not flow any duty on the part of the employer to accede to demands of the employees. However, before the obligation to bargain collectively is fulfilled, a forthright, candid effort must be made by the employer to reach a settlement of the dispute with his employees. Every avenue and possibility of negotiation must be exhausted before it should be admitted that an irreconcilable difference creating an impasse has been reached." (R. 37.)

We contend that the evidential findings of the Board and the admitted facts show that respondent fulfilled every obligation which the Board imposed upon it by even this most stringent rule. However, we contend that it was arbitrary for the Board to apply that rule to respondent. Although it might be reasonable to require an employer to continue the status quo for a long time while negotiating the terms of an employment contract to be entered into with its employees, the Board should not have applied that rule to respondent employer who in this case, after long negotiations, definitely insisted that a substantial provision of a contract already made should be placed in effect.

The Government cites *Jeffery-Dewitt Insulator Company vs. N. L. R. B.*, 91 F. (2d) 134. In that case there was no existing agreement between the employer and the employees. The dispute there concerned the making of an agreement. But that is not this case. It is distinguishable

National Labor Relations Board vs. Biles Coleman Lumber Co., 98 F. (2d) 18; *National Labor Relations Board vs. Carlisle Lumber Co.*, 94 F. (2d) 138; and *National Labor Relations Board vs. Remington Rand, Inc.*, 94 F. (2d) 862, which are cited by the Government (Gov. Br. pp. 17, 18) did not present situations where the sole ground of dispute was the repudiation by the employees of a contract already made.

In the case at bar the parties had an existing contract. Because at any time they might have modified it by mutual consent the Act imposed upon the respondent at most an obligation to consider the refusal of the Complaining Employees to permit the enforcement of the rule of departmental seniority, treating the refusal as a request that said provision for departmental seniority be waived. Certainly no greater obligation is imposed by the Act. The respondent did consider the repudiation of the provision by the Complaining Employees through "repeated conferences." It did not see fit to waive the provision. When the time came that respondent reasonably believed further conferences would be fruitless, it had the right to insist upon giving effect to the contract. When the Complaining Employees, after many conferences, definitely refused performance in accordance with its provisions, the respondent then had the right to refuse to have further negotiations about the matter.

The Government contends that in collective bargaining between an employer and his employees over a requested change in an existing contract, the merits of the dispute cannot affect the extent of the employer's obligation under Section 8 (5). (Gov. Br. p. 31.)

This statement cannot be the law, else a strike by a group of employees during the term of a contract for the purpose of accomplishing a change in the contract between them and their employer, as, for example, an increase in the wage rates specified in the contract, would be

lawful on the part of the employees, and filling their place unlawful on the part of the employer. Similarly, a lockout of employees by an employer during the term of a contract between him and his employees for the sole purpose of effecting a cut in the wage rates specified in the existing contract would be lawful. In other words, if the respondent employer did not have the right to stand on its contract and refuse to negotiate further on the MESA refusal to perform, then respondent's contract was worthless. Indeed, the value of every collective bargaining contract would be greatly lessened if the rule stated by the Board and by the Government were held to apply in such situations.

The respondent went the "second mile." It discussed the matter for weeks and weeks with the employees. The Board so finds. (R. 31.) Only after such full discussion did it exercise its right to terminate the negotiations. In requiring more of respondent the Board plainly exceeded the reasonable intendment of the Act.

3. No alternative course of action was open to respondent after August 21st except that it waive a substantial provision of its contract.

It is apparent from the evidential findings and the admitted facts: that, except it waive its rights under a substantial provision of the contract, the respondent had no alternative course of action to that which it took on after August 21, 1935, if it would operate its plant under the rule of departmental seniority set forth in the contract (R. 31, 377, 572); that the Complaining Employees forced it to take that action (R. 31, 377, 572); that the Board employed inference upon inference arising out of events transpiring after August 21, 1935, for the purpose of concluding that what it expressly finds was an honest position (R. 36) actuated by a lawful motive (R. 36) and which was followed by a consistent course of conduct (R. 32), later became an integral part of an open, deliberate, and intentional plan to violate the Act. (R. 38, 39.)

At a time when respondent wanted to operate its machine shop with an increased working force, the committee, after consultation with the MESA employees, told the respondent that it could shut down its plant but it could not increase the working force in its machine shop with "new" men. (R. 377, 572.) The Board colors this fact by using the term "preferable course." (R. 32.) But the respondent knew it to be a permanent refusal and so did the Complaining Employees. (R. 377, 572.) That the committee never communicated at all with respondent (R. 530), that they picketed respondent's plant for a month (R. 34), and suspended every MESA member who went to work for respondent (R. 230, 231), and that their position was the same at the trial, proves it. The Board found that it was inconceivable that the employees would have accepted respondent's interpretation of the contract even if they had been threatened with discharge at the time. (R. 37.)

4. The evidential findings of the Board show all the elements of an impasse.

The Board refused to find that an impasse had been reached. But it did find all the elements of an impasse, to wit:

1. A demand by respondent for performance according to the rule of departmental seniority set forth in the contract, that is, a single issue. (R. 31.)

2. A definite refusal by the Complaining Employees to render their services in accordance with said rule. (R. 31.)

3. Repeated conferences extending over several weeks after which the positions of the parties remained diametrically opposed. (R. 31.)

4. That respondent's position was in accordance with its honest interpretation of its contract. (R. 36.)

5. That respondent's impelling motive in maintaining that position was unimpeachable. (R. 36.)

6. That if respondent had informed the employees on August 21st that the shutting down of its plant meant the permanent loss of their jobs they would have struck rather than abide by the rule of departmental seniority; in other words, that further negotiations would have been useless (R. 37.)

The reasoning of the Board's predecessor in the following case is sound and applies in respondent's situation. The facts were that a union assessed a fine against an employee with whom union members refused to work until that fine was paid. On his failure to pay, the union demanded payment of the fine by the employer. The employer refused to pay. The employees went on strike. A charge of refusing to bargain collectively was filed under Section 7 (a) of the National Industrial Recovery Act which in substance was the same as Section 7 of the Act. Deciding the case the former National Labor Relations Board said:

"Section 7 (a) does not require the company to do any of these things, even if the continued employment of Schmeltz in his present position, without union card, forfeits the company's right to display the union label. We may assume that the issue was proper subject for collective bargaining, especially in view of the long continued arrangement between the company and the union. *But the required process of collective bargaining under Section 7 (a) varies with the nature of the issue. If a very intricate wage scale is involved, a considerable time may be consumed in negotiation, with a consideration of proposals and counter-proposals before the process of collective bargaining is exhausted. In the present case, however, the issue was narrow and simple. Wright discussed it with the union representative and after an exchange of views made it perfectly clear that he would have nothing to do with advancing money for Schmeltz's fine, which, he said, was a matter between Schmeltz and the union. The position that*

assumed by the company was not a violation of Section 7 (a). The duty of the company to bargain collectively did not require that it help Schmeltz with his fine: the process of collective bargaining had thus been carried to a point where an irreconcilable difference created an impasse.

"When, therefore, the employees went out on strike, this strike could not be ascribed to any previous violation by the company of its duty to bargain collectively. Nor did the intervention of the strike revive or enlarge the obligation of the company to negotiate on the issue of Schmeltz's fine. The situation, in this aspect, is the same as if there had been no strike, and the union had sought repeated interviews with Wright to renew its proposal that Wright do something about Schmeltz's fine. Considering the nature of the issue, Wright could have replied that further discussion was fruitless and that he had made his position clear. The strike was designed to make Wright yield on a point he had firmly taken; but his failure so to yield was not a contravention of the statute." (Emphasis ours.)

In the Matter of Clifton Wright Hat Co. and United Hatters of North America, Local No. 1, Vol. II, N. L. R. B. (Old), 452, pp. 453, 454.

The ultimate facts found by the Board cannot be at variance with its own evidential findings. Section 10 (e) of the Act does not empower the Board to ignore substantial evidence and those of its own evidential findings which incontestably prove an impasse and to arbitrarily find no impasse. Beyond any reasonable doubt an impasse had been reached in this case.

"It is the duty of the Board to decide the case before it on all the evidence. It is not at liberty to rely upon part of the evidence in support of its findings and put aside all other undisputed evidence."

Peninsular & Occidental S. S. Co. v. NLRB, 98 F. 2d 411, 415. Certiorari denied Dec. 12, 1938.

5. The Government's attempt to explain away the impasse reached on departmental seniority by suggesting that respondent might have raised other issues is beside the point.

Respondent's obligation to the MESA employees was to make "a reasonable effort to compose differences." (*Virginian Ry. Co. v. System Federation No. 40*, 300 U. S. 515, 548.) The one point of difference was departmental seniority. (R. 31, 573.) Both the Board, in its decision and the Government, in its brief (Gov. Br., pp. 17-28), attempted to enlarge this single difference so as to embrace additional subject matter and for no other purpose than to make what was actually a dispute over the single issue of departmental seniority appear to be a dispute about something else. Such action is contrary to the evidential findings of the Board. (R. 36.)

The first of such items is not a new issue. It is the old issue of departmental seniority. The Government contends that respondent should have bargained further concerning it because "no one believed that a permanent impasse had been reached." (Gov. Br., p. 21.) To the contrary, the evidential findings of the Board and the admitted facts as to the acts of the Complaining Employees prior to and after August 21st and the Board's conclusion from said acts (R. 37), definitely establish that to the Complaining Employees the difference was irreconcilable. Respondent was not unreasonable when it reached the same conclusion as did the Board and directed its course accordingly.

Secondly, despite Sands' denial (Gov. Br., p. 21), and without any supporting finding of fact, the Government contends that the events of August 21st resulted in an agreement binding upon respondent that it would shut down its plant until sufficient orders accumulated to warrant taking back all the old men in their own departments (Gov. Br., p. 23), and that respondent should have conferred with the MESA before it did anything inconsistent with the alleged agreement.

As we have pointed out in Point One, C(a), of this brief, there was no agreement. Furthermore, the issue had persisted all summer in both slack and busy times. (R. 30, 294, 297, 363, 387, 573.)

The Government's contention gives no effect whatever to respondent's contract with the MESA. The Board found that respondent did not want to shut down its plant. (R. 31.) It could always shut down for lack of business without the consent of the committee. It wanted to operate its machine shop. (R. 31.) The MESA was bound by its contract to permit the respondent to run "by departments." (R. 34, 289-291, 365, 574-576, 579, 611, 612.) When the committee said that respondent could shut down its plant but it could not give effect to the rule of departmental seniority (R. 377, 572) it repudiated the seniority rule in the contract definitely and itself forced the shut down by its own wrong. For that action the MESA was entirely responsible. Respondent's only alternatives were a surrender of its right to operate or a strike. (R. 37.)

The Government states that "respondent, of course, might have adhered to its original decision after collective bargaining; but by the plain requirements of the Act it could not make that decision without collective bargaining on this new issue which it had raised." (Gov. Br., pp. 23 and 24.) That is plainly academic and theoretical. The Board found that it was inconceivable that the employees would have accepted departmental seniority, even if the respondent told them that it meant the loss of their jobs if they refused it, "especially since the men had been so successful when they struck a few months earlier." (R. 37.) The Act does not require the respondent to make an unreasonable effort to compose differences.

Respondent's decision to terminate negotiations did not create a new issue. The issue was still departmental

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

5
2

W
8
-
9
9



seniority. Pansky and Linsky, each members of the committee, were sent for individually on August 30th. They returned on September 4th. (R. 32.) They were each told that the offer of reemployment was not being made to the rest of the old men. (R. 33.) Nevertheless, neither of them communicated to the respondent any change of position as to departmental seniority from that they had taken as members of the committee on August 21st. The old issue was still there.

The third contention of the Government is that respondent should have attempted to negotiate a general wage reduction with the MESA. (Gov. Br. pp. 24, 28.) In other words, the Government contends that respondent refused to bargain collectively because it did not offer to "trade" a waiver by respondent of departmental seniority for an agreement by the employees to accept a general reduction in wages. Here again the Government gives no effect whatever to respondent's contract.

Respondent was entitled to have its work in the machine shop performed by machine shop employees at their regular rates. The respondent should not be forced to offer to trade any part of its contract for any other part and thereby find itself with no contract at all. The matter of a general wage reduction was never discussed in any conferences. As we have already pointed out (Point One, L. 2, of this brief), the only basis for the Government's contention is the fact that after it had dealt with the A. F. of L. for the purpose of securing a new working force, the respondent attempted to hire four old men at an annual wage instead of an hourly wage for time actually employed.

But let us assume, as the Government suggests, that respondent had attempted to secure a general reduction in wages. The respondent was obligated to pay the contract rate of wages until March 1, 1936. No reasonable person in respondent's position would have concluded

that the Complaining Employees would have consented to a wage reduction at a time when the respondent was obligated to pay those wages for six more months, "especially since the men had been so successful when they struck a few months earlier." (R. 37.)

B. There was a willful refusal after repeated conferences by the Complaining Employees to render their services in accordance with the contract.

We shall not repeat the findings and the admitted facts to which we have already adverted and which show a willful refusal on the part of the Complaining Employees after repeated conferences to render their services in accordance with the rule of departmental seniority set forth in the contract, except to state again that the shop committee, representative of the Complaining Employees, told the respondent that they preferred shutting down the plant to working under that rule. (R. 32.) Pansky and Jindra, members of the shop committee, admitted that the committee's answer to the respondent on August 21st was that it could shut down the plant but that it could not give effect to the rule of departmental seniority. (R. 377, 572.)

The contract was executed June 13, 1935. The men returned to work June 17, 1935. (R. 30.) Shortly thereafter the departmental classifications of its employees was posted by respondent. (R. 170, 175, 206, 434, 518, 574, 579, 612.) The committee admitted that it was understood that the classification was to stay that way. (R. 579.) Nevertheless, the Complaining Employees after the contract was signed never permitted respondent to give effect to the rule, and under the constant coercion of paragraph 20 of the contract (R. 602), respondent was forced to plead for its rights almost from the time that the men returned to work on June 17th. (R. 294, 297, 573, 289, 290, 291, 363, 387.) Under this coercion respondent was forced to again try out the old practice which it again condemned. (R. 290, 291, 371,

386, 387.) The Board refused to decide the question whether or not the action of the Complaining Employees was a breach of their contract. (R. 35, 64.) The Court below construed the contract. Its construction was the same as had been the respondent's interpretation of it. It held there was a willful breach of contract by the Complaining Employees. (R. 612.)

The evidential findings of the Board and the admitted facts amply sustain the statement of the Court below when it said:

"We see no ambiguity in the contract, and agree with respondent's construction of it. To give it any other meaning is to nullify paragraph (5). The men objected to carrying out this provision, and the matter was discussed repeatedly from the time of the execution of the agreement. Respondent is not charged with breaking the contract, and in fact this record shows that it complied on its part with all the terms of the agreement, but the shop committee refused to permit respondent to increase the force in the machine shop in accordance with the contract, even though the only alternative was the closing of the plant." (R. 612.)

In so holding the Court below merely applied a well settled principle of contract law. Construing a collective agreement in Nebraska the Supreme Court held:

"Such a collective agreement, being a general offer, becomes a binding contract when it is adopted into, and made a part of, the individual contract of each employee. A breach of its terms will give rise to a cause of action by either party.

"The terms of the collective agreement, as included in an individual labor contract, ought not to be construed narrowly and technically, but broadly, so as to accomplish its evident aims and protect both the employer and the employee."

Rentschler vs. Missouri Pacific Railroad Co., 126

Neb. 493, 253 N. W. 694, 95 A. L. R. 1.

In the following case union stevedores refused to unload a ship at the rate of wages set forth in the contract existing between the unions and the association of employing stevedores, one of whom was libelant's agent. They demanded a higher rate. Libels *in personam* were filed against the two unions. Libelant was awarded a decree for its damages. Referring to the contract the Court said:

"By it the respondents establish the principle of collective bargaining, obtain the closed shop, 44-hour week, extra rates of pay for overtime, and their own working conditions, all that union labor, so far, as has ever contended for. I think the contract is valid, and imposes the reciprocal obligation on respondents to work according to the contract in good faith. There is no doubt the action of the men was arbitrary and amounted to a breach of the contract."

Nederlandsch, etc. vs. Stevedores & Longshoremen's etc. Association, 265 Fed. 397, 400.

Throughout this proceeding the Board refused to recognize that the contract imposed any obligation whatever upon the Complaining Employees. The Board held that the existence of the contract and whether or not there was a breach of it was immaterial and irrelevant. It gave no effect whatever to the admissions by the members of the committee of the repudiation of the contract. That the Board was arbitrary in this position is further evidenced by the fact that its order against the respondent is no different in its punitive respects from those customarily issued by it in cases where it has found that employers have entirely refused to recognize the representatives of their employees and have engaged in espionage, interference, restraint and coercion.

C. The breach of contract by the Complaining Employees was cause for their discharge.

The evidential findings and the admitted facts pose the following question: When the employees of an employer, after repeated conferences with their employer extending over a substantial period of time, during which the employer urges them to abide by a substantial and material provision of the contract existing between them and the employer, collectively repudiate that provision and refuse to render their services in accordance therewith, may they, therefore, be lawfully discharged under the Act? Were it not for the Board's holding that the violation of the contract was immaterial (R. 36), and the Government's contention that the contract is irrelevant (Gov. Br. pp. 29-40), there would seem to be no question but that the employees' breach of contract was cause for discharge.

This Court has said:

"The Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion."

National Labor Relations Board vs. Jones & Laughlin Steel Co., 301 U. S. 1, 45, 81 L. ed. 893, 916, 57 S. Ct. 615, 628, 108 A. L. R. 1352, 1370.

"The Act permits a discharge for any reason other than union activity or agitation for collective bargaining with employees."

The Associated Press vs. National Labor Relations Board, 301 U. S. 103, 132, 81 L. ed. 953, 960-961, 57 S. Ct. 650, 655.

Upon these decisions the Court below based its holding that:

"If employees violate their contract, they may be discharged for that reason, and this does not constitute a discrimination in regard to tenure of employment nor an unfair labor practice, nor does it constitute discharge because the employees are members of a union." (R. 613.)

D. The Breach of Contract was material.

In its decision the Board states:

"Although the Board is of the view that an honest difference of opinion existed on the construction of the June 15th agreement, the case against the respondent is not in any way prejudiced if the stand of the shop committee in resisting the demand of the respondent to build up the machine shop with new men instead of with old men is considered a violation of the agreement." (R. 36.)

The Court below, referring to the Board's statement, said:

"We disagree with this view. While the statute creates new and important rights for labor, it does not abrogate the correlative rights of the employer." (R. 610, 611.)

The Board's statement is startling in its implications. For many years collective labor agreements have been held by the courts to be mutually enforceable. Most of the old line unions proudly maintain that they have never broken their agreements. One of the most serious problems in industrial relations is that created by the "wild cat" strike, that is, a strike initiated by employees in violation of their agreement. By such wrongful strikes, hundreds of thousands of men have been deprived of their daily livelihood. The statement from the Board's decision quoted above can not be otherwise considered than as a bestowal of the

Board's blessing on groups of employees who violate their agreements.

If in this case the breach of contract by the Complaining Employees is considered immaterial, then the contract which the Act was designed to promote between respondent and its employees was worthless, a scrap of paper, and the very purpose of the Act is nullified. The Act does not compel collective bargaining looking toward a contract and at the same time invalidate the contract it has encouraged by permitting an interpretation to the effect that an employer can not use it as the measure of his conduct toward his employees and of their conduct toward him. The Act does not encourage the making of contracts the breach of which is to be considered immaterial. The Act does not permit such a conclusion and such was not the intent of Congress.

1. By passage of the Act Congress intended to encourage the making of contracts through the process of collective bargaining between employer and employees. It did not take from such contracts any of their ordinary and usual incidents including the right to discharge for the willful breach thereof.

This Court has said concerning the Act:

"The National Labor Relations Act seeks to protect the employees' right of collective bargaining and prohibits acts of the employer discriminating against employees for union activities and advocacy of such bargaining by denominating them unfair practices to be abated in accordance with the terms of the act."

The Associated Press vs. National Labor Relations Board, 301 U. S. 103, 129, 81 L. ed. 953, 959, 57 S. Ct. 650, 654.

"The Act contemplates the making of contracts with labor organizations. That is the manifest objective in providing for collective bargaining."

Consolidated Edison Co. of New York etc., et al. vs. National Labor Relations Board, 83 L. ed. Oct. Term, 1938, Adv. Ops. pp. 131, 144.

In its report recommending passage of the bill, the Senate committee said:

"It seems clear that the guarantee of the right of employees to bargain collectively through representatives of their own choosing is a mere delusion if it is not accompanied by the correlative duty on the part of the other party to recognize such representatives as they have been designated (whether as individuals or labor organizations) and to negotiate with them in a bona fide effort to arrive at a collective bargaining agreement. . . . Experience has proved that neither obedience to law nor respect for law is encouraged by holding forth a right unaccompanied by fulfillment. Such a course provokes constant strife, not peace."

Senate Committee on Education and Labor, Report No. 573, 74th Congress, p. 12.

Stabilization of business conditions by collective agreements between employers and employees would also be a mere delusion if they be not held to impose mutually enforceable obligations. If, before the Board it is immaterial that the Complaining Employees had willfully violated their contract, then is disobedience of and disrespect for law thereby encouraged and constant strife, not peace, prescribed as our daily portion.

The Act even preserves to the employer, as well as to the employees, full right and power to refuse to make an agreement if the proposals made are unsatisfactory.

In the same report the committee said:

"The committee wishes to dispel any possible false impression that this bill is designed to compel the making of agreements or to permit governmental supervision of their terms. It must be stressed that the duty to bargain collectively does not carry with it the duty to reach an agreement, because the essence of collective bargaining is that either party shall be free to decide whether proposals made to it are satisfactory."

Idem. p. 12.

This Court said:

"The Act does not compel agreements between employers and employees. It does not compel any agreement whatever. It does not prevent the employer from refusing to make a collective contract and hiring individuals on whatever terms the employer 'may by unilateral action determine.'"

National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 45, 81 L. ed. 893, 916, 57 S. Ct. 615, 628, 108 A. L. R. 1352, 1369.

Under the Act the respondent was therefore within its rights in June to refuse to contract with MESA unless and until MESA agreed to the rule of departmental seniority. Respondent even had the right to hire others to take their places if they refused to agree. The Board will not dispute this proposition. But the decision of the Board is that breach of contract is not cause for discharge. Otherwise it could not have held that the fact of a breach was immaterial. Truly, if that be the effect of the Act, respondent were better off had it made no contract, for it would have been protected by the Act in its refusal to agree, whereas it is not protected once the contract is made. By such an interpretation the contract becomes worthless.

The Act is designed to promote and encourage the making of contracts. That purpose at once implies a purpose not to discourage their performance. The Board's decision that the breach of such a contract is immaterial destroys the very thing which the Act was designed to promote. Congress did not intend to encourage the making of immaterial contracts. It is in direct conflict with the declared policy of the Act.

The decisions of this Court interpreting the Act have preserved this right in accordance with the intent of Congress. With them, the decision of the Board in our case holding a wilful breach of contract to be immaterial is in irreconcilable conflict. We submit that the breach was material and that it was cause for discharge.

SUMMARY OF POINT TWO.

We respectfully submit that upon the evidential findings and admitted facts an impasse was reached on August 21st, 1935, between the MESA employees and the respondent; that the respondent was not unreasonable in terminating negotiations at that time; that the employees' rejection of the provisions of their contract establishing departmental seniority in respondent's plant was a wilful breach of contract constituting cause for the discharge of all MESA employees without further negotiations.

POINT THREE.

UPON THE EVIDENTIAL FINDINGS OF THE BOARD AND THE ADMITTED FACTS THE COURT BELOW RIGHTLY CONSIDERED RESPONDENT'S ACTS AFTER AUGUST 21st IN THE LIGHT OF THE THEN STATUS OF THE COMPLAINING EMPLOYEES AGAINST WHOM RESPONDENT HAD CAUSE FOR IMMEDIATE DISCHARGE. WHEN SO CONSIDERED RESPONDENT'S ACTS SHOW NO VIOLATION OF THE ACT.

Neither the Board nor the Government, in their consideration of respondent's acts after August 21st, have given any effect to the impelling motive for the acts, the impasse, and the breach of contract, which establish respondent's purpose to be lawful. Instead they have given undue emphasis to said acts in an attempt to make them, other than respondent's actuating purpose, appear to be the principal issue in this case.

Confronted with the impasse and the willful breach of their contract by the Complaining Employees, respondent, after August 21st, was entitled to proceed lawfully to get its plant into operation with employees who would work under the rule of departmental seniority.

Respondent found it necessary to do several things, some of which constituted a consistent, progressive course of conduct. (Point One, D, of this brief.) Briefly, on August 26th or 27th, it went to the Machinists' Union to which some

of its "new" and "old" men belonged and negotiated an agreement and arranged for additional help. (R. 32, 486, 493, 586.) The MESA never represented these A. F. of L. men. (R. 236.) Later it attempted to employ as foremen four of the "old" MESA workmen. (R. 32, 33.) It opened its plant on September 3, 1935 (R. 32), operating at first the machine shop alone for a period of about two weeks. (R. 450.) On September 4th it held final conversations with Pansky (R. 32) and Dolish (R. 330), and on September 5th with Linsky (R. 32) and Ochs. (R. 390.)

The Board arbitrarily found that on September 4, 1935, the day after respondent had reopened its machine shop, Potter telephoned respondent on behalf of the committee and asked for a meeting between respondent and the committee. (R. 33.)

We will discuss each of these affirmative steps taken by respondent in their chronological sequence and show that when they are considered in the light of the then status of the Complaining Employees, respondent did not violate the Act.

A. Respondent did not violate the Act when on August 26th or 27th it negotiated an agreement with the A. F. of L. Machinists' Union.

1. Respondent had the right to hire new employees to fill the places of the **MESA**.

When confronted with a lawful strike the employer whose only sin is failure to agree with the strikers on their demands, is not required by the Act to either agree with them or to sit idly by and let his business go to ruin. The strike, being lawful, the employer may not discharge the strikers but he may fill the places of the strikers and thereby effectuate their discharge.

The Court has spoken on this situation as follows:

"Nor was it an unfair labor practice to replace the striking employees with others in an effort to carry

on the business. Although Section 13 provides, 'Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike,' it does not follow that an employer, guilty of no act denounced by the statute, has lost the right to protect and continue his business by supplying places left vacant by strikers. And he is not bound to discharge those hired to fill the places of strikers, upon the election of the latter to resume their employment, in order to create places for them."

National Labor Relations Board vs. Mackay Radio & Telegraph Co., 82 L. ed., Adv. Op., Oct. Term No. 17, 861, 867, 304 U. S. 333, 345, 58 S. Ct., 904, 910-911.

1. Respondent had the right to discharge the **MESA** employees.

On the other hand, it is unlawful for employees to strike in violation of their contract. In such case the employer guilty of no unfair labor practice, in addition to the right to fill the places of the strikers free from any obligation to discharge the new men, has the right to discharge the strikers after demanding performance. The discharge in such a case is not for union activity and membership but for breach of contract, and, therefore, is not an unfair labor practice.

In our case, as has been shown in Point Two, the respondent demanded performance after a willful refusal extending over several weeks and negotiated to an impasse.

There is no essential difference between employees insisting on continuing in employment but refusing to render their services in accordance with their contract, and their going off the job and refusing to render any services. In either case it is a breach of contract.

There is no difference between discharging one employee for insubordination and discharging two or more for the same offense. There is no difference in this case

between respondent's discharging Norman for inefficiency, i.e., a breach of his implied covenant to render efficient service, and discharging all of the Complaining Employees for their breach of contract.

To discharge one or a group of employees, after repeated conferences, for willful refusal to perform in accordance with their contract would also seem to be merely "the normal exercise of the right of the employer to select its employees or to discharge them," with which the Act does not interfere. Here again it would seem that the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than intimidation or coercion. *National Labor Relations Board vs. Jones & Laughlin Steel Co., supra.*

3. Respondent's right to hire new employees included the right to make a contract for their services.

Having the right to fill the places of the Complaining Employees and to discharge them, necessarily, respondent had the right to enter into contracts of hiring. It determined to discharge the MESA employees. The Carbecks, who were constantly employed upon special work after August 21st, were A. F. of L. members. (R. 486, 501.) Many of the "new" men were A. F. of L. members. (R. 32.) The MESA contract was open shop in form, did not recognize the MESA as the exclusive bargaining agency (nor had it been so certified by the Board), and it was not so interpreted by the MESA. (R. 600, 601.) The MESA did not represent any of these A. F. of L. employees. (R. 236.) These A. F. of L. men were entitled to bargain collectively with respondent, and, until some agency, either by contract or by the Board, was constituted and functioned as the exclusive bargaining agency, the A. F. of L. had the right to deal with respondent for its members and respondent had the right to deal with the A. F. of L. *Consolidated*

Edison Co. of New York etc., et al., vs. National Labor Relations Board, Supreme Ct., Oct. Term, 1938, Vol. 83, L. ed. Adv. Op., No. 4, pp. 131, 144.

Respondent rightfully dealt with A. F. of L.

Furthermore, upon effectuation of the discharge of the MESA employees, the A. F. of L., as the representative of the only remaining employees, would be the only union having members in respondent's employ. Having first determined to discharge the MESA employees, respondent could negotiate, therefore, with the A. F. of L. either as representative of its members only, or, as the representative of a majority of respondent's employees. *Consolidated Edison Co. of New York vs. National Labor Relations Board, supra*. The respondent did the latter. (R. 586.)

There was no waiver or condonation of the breach of contract.

Whether or not respondent had yet actually discharged the MESA employees is immaterial because respondent then had the right to discharge them. It was entitled to exercise this right until it waived or condoned the breach, or until, before it had materially changed its position, the MESA had communicated to respondent a change in their position, neither of which ever happened.

The Government points to Tulow, Pansky, and Rudd, who were employed a day or two each subsequent to August 21st in respondent's plant. (Gov. Br. 34-35.) It is clear that the only workmen steadily employed during that time were the two Carbecks, A. F. of L. men, who were employed at making tools for new models. (R. 441.) No waiver or condonation of the collective breach of the contract was found by the Board from the testimony to which the Government points, nor can any be implied therefrom. The Government's statement that Rudd was employed after September 3rd is misleading. At that time, Rudd was

working for respondent's Vice-President, Joseph M. Sands, at his home, and not for respondent. (R. 223, 234, 521-522.)

6. The MESA employees were not injured by respondent's dealings with A. F. of L.

The Government contends that on August 26th or 27th the MESA was still the representative of a majority of respondent's employees. (Gov. Br. p. 34.)

The evidential findings of the Board and the admitted facts show that on and prior to August 21st all of the employees represented by the MESA were subject to discharge for cause. (Point Two of this brief.) MESA's rights as a representative must be determined by their rights as principals. By giving cause for discharge, after previous negotiations had resulted in an impasse, at the option of respondent they destroyed both their rights against respondent and the rights of their representative.

Thereafter, the only union with whom respondent could be required to deal was the A. F. of L. as the representative of those of its employees who had not given cause for discharge. It dealt with that union.

Respondent did not deal with A. F. of L. in respect of any MESA employees. The only individuals that could possibly be injured by the A. F. of L. contract would be those employees hired or working for respondent on September 3rd and thereafter, and then only, if the A. F. of L. was not the representative of a majority of them. The MESA employees did not make application for reemployment. They were prevented by MESA from making such applications. They, therefore, were not injured and there is no evidence that of those employees engaged in the plant after September 3rd, the A. F. of L. did not represent the majority.

The A. F. of L. contract was cancelled September 10, 1935.

On or about September 10, 1935, at the request of the respondent, the agreement between it and the International Association of Machinists, District No. 54, was cancelled by mutual consent of the contracting parties. (R. 34, 602.)

The reason for requesting cancellation of this agreement was stated by Garry Sands as follows:

"I didn't know what would happen if the complaint would be filed upon us, and I thought to myself well what is the use of getting into more difficulties and have two contracts, that I thought it better if I will go down and see if I can get the one contract cancelled and let the other contract take care of itself." (R. 544.)

The fact that the A. F. of L. contract was in effect only one week proves that it was no barrier to an offer by the ISEA employees to perform their contract. That none has made demonstrates the determination of the committee to rule or ruin despite the contract.

Respondent's individual dealings with the four "old" men did not violate the Act.

They were sent for after the contract with A. F. of L. was negotiated. They made no voluntary applications.

On August 30th Pansky and Linsky were sent for and a conference had with them jointly. (R. 32.) A second conference was had with each of them separately on September 4th, the day after the plant opened. (R. 341, 354.) Polish was sent for and a conference had with him August 31st. (R. 329.) A second conference was had with him September 4th. (R. 330.) Ochs was sent for and a single conference had with him on September 5th. (R. 390.) Respondent's proposition was a new employment at an annual wage. (R. 38.)

2. They were selected because of their skill.

The Board arbitrarily refused to find that these four old men were key-men (R. 77), although the request was supported by the testimony of the Complaining Employees themselves. Pansky was a foreman. (R. 381.) Linsky was a foreman. (R. 338.) Dolish was a leader or key-man. (R. 327.) Ochs was to have been given charge of the coil room and the tank heater department. (R. 391.) Garry Sands testified that he selected them because they were all-around men. (R. 543.)

The only inference supported by the evidence concerning respondent's dealings with the four "old" men is that the respondent attempted to reemploy them in order to avoid running its plant with an entirely new group of supervisors, and that, as an inducement to obtain their services as key-men, it offered them what amounted to an annual wage for guaranteed steady work. (R. 609.)

"It is the duty of the Board to decide the case before it on all the evidence. It is not at liberty to rely upon part of the evidence in support of its findings and put aside all other undisputed evidence."

Peninsular & Occidental S. S. Co. v. NLRB, 98 F. 2d 411, 415. Certiorari denied Dec. 12, 1938.

3. It was not a violation of the Act to negotiate with them individually.

In its findings the Board states:

"We fail to see in the respondent's conduct anything other than a refusal on its part to bargain collectively with the representative of its old employees. This, especially in conjunction with the negotiations of the respondent with the four men individually, constituted a violation of the respondent's duty to bargain collectively with the representatives of its employees." (R. 38.)

This finding of the Board is erroneous for two reasons.

First, even if for the time being we do not consider that the MESA employees had all given respondent cause for their discharge, the respondent negotiated with them individually as principals. There is nothing in the Act which prohibits an employer to negotiate with an individual employee as a principal if the employee be willing. The Act requires only that the employer not bargain collectively for its employees with any other than the exclusive bargaining agent which has been chosen by those employees for that purpose.

This Court has interpreted Section 9 (a) of the Act as having for its purpose:

“to prohibit the negotiation of labor contracts generally applicable to employees’ in the described unit with any other representative than the one so chosen, ‘but not as precluding such individual contracts’ as the Company might ‘elect to make directly with individual employees.’ We think this construction also applies to Section 9 (a) of the National Labor Relations Act.”

—*National Labor Relations Board vs. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 44, 45, 81 L. ed. 893, 57 S. Ct. 615.

Second, these four “old” men had given respondent the same cause for discharge as had all other MESA employees. New employees were being hired to fill their places. The respondent was negotiating with these four “old” men in the same manner that it would have negotiated with four entirely strange individuals. The subject matter of the individual dealing was a new employment upon a new and different basis. Such individual dealing for a new employment is not prohibited by the Act.

4. Respondent's suggestion of A. F. of L. membership to two of them did not violate the Act.

- (a) The Board's finding that A. F. of L. membership was made a condition prerequisite to their reemployment is not supported by substantial evidence.*

We have shown that A. F. of L. membership was not discussed with Dolish or Ochs and that the Board's finding that it was required of the four old men (R. 39) is, therefore, 50% erroneous at the start. (Point One D of this brief.) The only fair inference from the evidence is that it was merely suggested to Pansky and Linsky, but that it was not made a condition of their reemployment.

Garry Sands testified that A. F. of L. membership was not made a condition of the reemployment of Pansky and Linsky, but that it was suggested only as a means whereby they would be assured of physical protection from the MESA by the A. F. of L. (R. 526-528.) Linsky admitted this on cross examination. (R. 345.) Pansky admitted being shown the A. F. of L. contract and having the opportunity to read it. (R. 379, 381.) Nothing in Article II of said contract (the only applicable provision) required respondent to make A. F. of L. membership a condition of their employment. Respondent only agreed to suggest it after a thirty days probationary period. (R. 587.) It is incredible that Pansky, a member of the MESA committee, would not have read the provisions of Article II carefully and raised the question if A. F. of L. membership were required of him and not of the others.

Upon the evidential findings of the Board and Linsky's admission, therefore, A. F. of L. membership was not made a condition of the reemployment of Dolish, Ochs, or Linsky. It is therefore unlikely that of Pansky alone it should have been required, especially in view of the fact that at the first conference, A. F. of L. was not mentioned. (R. 379.)

(b) *Respondent's contract with A. F. of L. provided for a preferential shop and such contracts are lawful.*

In its third assignment of error the Government complains of respondent discussing A. F. of L. membership with Pansky and Linsky on the ground that the A. F. of L. did not have a closed shop contract with respondent. (Gov. Br. p. 10.) The A. F. of L. was the representative of the majority of respondent's employees on September 4th. The MEWA contract had been abrogated and the plant had been opened with A. F. of L. employees filling the available jobs. (R. 32.)

The Government contends that Section 8 (3) of the Act prohibits an employer from requiring union membership of new employees unless the employer has a closed shop agreement with the union which is representative of the majority of his employees. (Gov. Br. 49-51.) This contention is fallacious.

It is apparent from Section 8 (3) that an employer can not make such an agreement unless the union demanding it represents a majority of his employees. Conversely, the union may not lawfully demand a closed shop agreement unless it represents a majority. Therefore, under the Act, whenever a union becomes the representative of the majority it may demand: either, (a) a contract in behalf of its members, (b) a contract in behalf of all employees who desire to bargain collectively as their exclusive bargaining agent, (c) a preferential closed shop contract, or (d) an absolute closed shop contract, and the employer may agree with the union on any of said types of contract.

When Congress authorized an employer to impose membership in the majority union upon a minority of his employees against their will by a closed shop contract made with the majority union, it therefore necessarily authorized him to impose such membership as a condition of employment by means of a preferential closed shop contract. The greater, the closed shop contract, certainly includes the

lesser, the preferential closed shop contract. Otherwise, preferential closed shop contracts are illegal. Respondent's contract with A. F. of L. was for a preferential closed shop. (R. 587.) It was in effect on September 4th and 5th at the time of the conversations with Pansky and Linsky. (R. 32.) In it respondent agreed "that wherever possible and practicable in employing new help, it will employ members in good standing" of the A. F. of L. (R. 587.) Respondent further agreed to suggest union membership to new employees after a trial period of 30 days. (R. 587.) There was no need to await a thirty day trial period for Pansky and Linsky. They were selected because of their known skill.

When Congress specifically legalized the closed shop as far as the Federal law is concerned, it did not intend to invalidate preferential closed shop contracts such as respondent made with A. F. of L. Respondent's suggestion to the two old men was in accordance with that contract, and, therefore, lawful.

(c) There is no finding that Pansky and Linsky would have accepted reemployment except for such requirement.

There is no evidence and no finding that Pansky and Linsky would have accepted such employment but for said requirement. In fact, the admitted facts show the reason for their refusal to be that if they had accepted the employment, they would have been suspended by the MESA, as were the three others who were reemployed by the respondent. (R. 231.) The finding, therefore, would not form the basis for any order to reinstate Pansky and Linsky and it is therefore immaterial and irrelevant.

(d) It was not within the issues and does not inure to the benefit of the other 45 employees.

Finally, if the Board's finding be accepted as a fact as to Pansky and Linsky alone, it was not within the issues

made by the complaint, wherein is presented the issue of whether or not respondent rightfully discharged the 48 Complaining Employees. Respondent was not charged with imposing A. F. of L. membership on two discharged employees as a condition of their reemployment, and refusing to reemploy them because of their refusal to accept said condition. The fact that the Board found that respondent sent for and offered reemployment to these two former employees requiring of them A. F. of L. membership, when considered with the fact that of the other two for whom it also sent respondent did not require A. F. of L. membership, can not inure to the benefit of the other 45 Complaining Employees who broke their contract and picketed respondent's plant for a month to maintain a position which was in violation of that contract.

C. The Board's finding that on September 4th Potter asked respondent to meet with the **MESA** committee is arbitrary. However, even if the finding be accepted, respondent did not violate the Act in refusing to meet with either Potter or the committee.

1. The finding is arbitrary.

The Board refused to make the following finding of fact:

"That the employees' committee made no request for a meeting with the respondent after August 21, 1935, nor did it, after that date, evidence any intention to withdraw in the slightest degree from the position it had taken in reference to departmental seniority prior to that date." (R. 76.)

There is no evidence to the contrary.

The Government states that "on the day following the reopening of the plant, the MESA asked Garry Sands to meet with the MESA committee." (Gov. Br. 8.) The statement distorts the facts.

The Board found that on September 4th, after respondent's plant was in operation, Potter telephoned Sands *in behalf of the shop committee*. (R. 33, 38.) This finding of the Board was arbitrary. We refer the Court to Potter's testimony. (R. 134, 135.) In his testimony there is no reference to a meeting with the committee. Note that his opening remark to Mr. Sands was in substance, "What the hell are you trying to pull off there?" (R. 134.)

He testified:

"Q. Did you ask him whether he would meet *you* that day?"

A. Yes.

Q. Or any time thereafter?

A. Yes.

Q. Did he agree to meet *you*?

A. No.

Q. What did he say?

A. He said the MESA was out and all the old men were discharged and he had nothing to talk about to *me*." (R. 135. Emphasis ours.)

Garry Sands denied that Potter asked him to meet him that day. (R. 530.) He also testified that Potter did not ask him to meet the committee. (R. 530.)

This telephone conversation is all the evidence there is in the record tending to support the Board's finding that the respondent ever refused a request for a meeting. Certainly, Potter's language was not a conciliatory approach for reopening negotiations, if, indeed, the committee wanted any further negotiations. Nor would respondent be unreasonable in concluding from Potter's remarks that the committee had not changed its position in reference to departmental seniority.

The Board's finding that Potter requested a meeting in behalf of the committee is grounded entirely upon the testimony of Pansky who was put back on the stand on rebuttal and then testified that he had been present with Potter during the telephone conversation. He said "Well

the end of it I heard was, 'Will you see the committee or me?' And he threw up his hands, and that is all." (R. 570.)

Considering the fact that Potter made no mention of a meeting with the committee in his testimony and that Pansky made no mention of a request for a meeting with the committee when called as a witness during the Board's case, Pansky's testimony is clearly incredible in the face of Potter's positive statement that Garry Sands "had nothing to talk about to *me*." (R. 135.)

Pansky therefore contradicted Potter, and as to a request for a meeting between respondent and the committee, Potter's testimony agrees with that of Sands who testified there was no such request. (R. 530.)

The Board's finding is, therefore, clearly arbitrary. Upon that finding principally rests the Board's entire case as to a refusal of any request to bargain. On that finding respondent is ordered by the Board to reinstate 47 men, pay them back wages for time not worked,—now over 3 years and estimated at the time of the hearing in the Court below to amount to \$65,000.00 and now amounting to probably more than \$100,000.00,—all because of a telephone call from a man not a member of the shop committee who began the conversation with, "What the hell are you trying to pull off there?" (R. 134.)

But even if we accept the Board's finding as most freely translated by the Government (Gov. Br. p. 8), that Potter asked respondent to meet with the committee, nevertheless, respondent did not violate the Act.

2. It was not a violation of the Act to refuse to meet with Potter.

In Points One and Two of this brief we have shown that the issue of departmental seniority had been the subject of conferences lasting practically all summer, that the respondent had negotiated to an impasse with the MESA, and that those negotiations had resulted in a positive decla-

ration by the committee that the respondent would not be permitted to operate its plant under the rule of departmental seniority. The negotiations over that matter, had therefore, been completed. Respondent is required by the Act to make a "reasonable effort" to compose differences. To require the respondent to continue further to operate in violation of its contract rights and to negotiate further concerning the same matter without any indication of any change in the committee's position would be unreasonable.

In its decision the Board held that despite the fact that on and prior to August 21st the Complaining Employees had given cause for their discharge, and that respondent's acts after August 21st show a continuous, progressive course of conduct on the part of respondent to fill their places and to discharge them, the Complaining Employees nevertheless, continued to be employees within the meaning of the Act. (R. 36 and 37.) We contend the Board's interpretation of Section 2 (3) of the Act to be erroneous.

The Complaining Employees having given cause for their discharge by their acts on August 21st and prior thereto, we contend that respondent could either continue to recognize them as its employees or proceed to discharge them, as it did, in which event they were no longer employees under the Act.

The discharge of the Complaining Employees in this case was effectuated by the abrogation of the agreement with the MESA, the dealings with the A. F. of L., the individual dealings thereafter with the old men, the opening of respondent's plant on September 3rd with employees other than MESA employees, and the Garry Sands conversation with Potter. Potter interpreted these facts as having resulted in the discharge of the MESA. He testified, "I understood that our men were out" (R. 134); that Garry Sands had told him, "The MESA was out and all the old men were discharged." (R. 135.) At the meeting of the MESA employees held September 5th the committee

men told the MESA employees that they were discharged. (R. 176.)

Section 2 (3) of the Act operates to invalidate only those discharges which amount to an "unfair labor practice" under the Act. It does not serve to continue the employee status when an employee is lawfully discharged. Take, for example, Norman's case in this record. Norman was discharged after a conference with the shop committee and the Board thereafter did not consider Norman as one of respondent's employees.

The Board's interpretation of Section 2 (3) would deprive the employer of the right to discharge an employee for cause without first bargaining with his union. The Act does not interfere with the normal right of the employer to discharge an employee for cause. *National Labor Relations Board vs. Jones & Laughlin Steel Co., supra*. The fact that thereafter a union makes demand upon an employer to negotiate concerning the discharge of an employee does not invalidate the discharge even if the request for a conference in respect thereto be refused, and even though the union making the request be the representative of the majority of the employer's remaining employees.

In the case at bar all of the Complaining Employees are bound by the authorized acts of their committee which give cause for their discharge. All MESA employees having been discharged for cause, the Board's finding that Potter requested a meeting in behalf of the MESA can not form the basis for an order to reinstate them any more than the request for such a meeting could justify an order to reinstate the single discharged employee in the case assumed. Nor was it a violation of Section 8 (5) of the Act. On September 4th, when Potter telephoned, the MESA was not the representative of any of respondent's employees.

That it was the intent of Congress that discharged employees retain their status of employees within the meaning of the Act only when their discharge amounted to an "un-

fair labor practice" by their employer, is apparent from the report of the Senate Committee.

"And to hold that a worker who because of an unfair labor practice has been discharged or locked out or gone on strike is no longer an employee, would be to give legal sanction to an illegal act and to deny redress to the individual injured thereby."

Senate Committee on Education and Labor, Report No. 573, 74th Congress, page 7.

Note that in the case of a discharged employee his status as an employee depends upon whether or not he was discharged pursuant to an "unfair labor practice" by the employer.

The reasoning of the Court below was identical when it said:

"While the statute creates new and important rights for labor, it does not abrogate the correlative rights of the employer." (R. 611.)

and:

"The controversy here was a current labor dispute within the definition of title 29, Section 152 (9), 29 U. S. C. A., Sec. 152 (9). But the statute does not provide that the relationship held in *status quo* under title 29, Section 152 (3), 29 U. S. C. A., Sec. 152 (3), shall continue in absence of wrongful conduct on the part of the employer and of rightful conduct on the part of the employees. If such were its meaning, the right of the employer to select and discharge his employees (*National Labor Relations Board vs. Jones & Laughlin Steel Corporation, supra*), which still exists in absence of intimidation or coercion in violation of the statute would be cut off. As the respondent was within his rights in not recalling the old men, their relationship was terminated by the discharge, and no discrimination in tenure existed." (R. 614.)

The Government recognizes this principle as sound (Gov. Br. 39, 40.)

The Board also has recently recognized the foregoing legal propositions as sound. In a case where a strike was caused by the refusal of an employer to grant a union demand for a 40-hour week, which strike was but partially effective, the employer continued to operate and to fill the places of the strikers. Although that respondent did engage in some unfair labor practices, the Board said:

"Since we have not found that the strike was induced or prolonged by the unfair labor practices in which the respondent engaged, we shall not make our usual order in such cases that the strikers be reinstated to the positions which they held prior to the beginning of the strike."

In the Matter of American Manufacturing Concern and Local No. 6 Organized Furniture Workers,
7 NLRB No. 92, p. 11, decided June 7, 1938.

There would seem to be no justification for the Board's attempting to maintain in this Court a position at variance with published decisions of the Board involving the same legal principle.

SUMMARY OF POINT THREE.

In its consideration of respondent's acts subsequent to August 21st the Board gave no effect to the impasse, to the breach of contract, or to respondent's lawful purpose in demanding performance.

On the other hand, the Court below gave effect to each of these matters. It held that respondent's acts by which it abrogated the MESA contract, procured other employees to fill their places and discharged them, when considered in the light of the fact that the Complaining Employees had given cause for their immediate discharge, were lawful and not in violation of the rights of the Complaining Employees under the Act.

We respectfully contend that the Court below was right.

THE ERRORS ASSIGNED ARE NOT WELL TAKEN.

Five errors are assigned. (Gov. Br. p. 10.)

The Government adheres to the position of the Board giving no effect to respondent's contract with the MESA.

It still contends that whether or not there was a breach of the contract by the MESA employees was immaterial and irrelevant. (R. 36.)

It contends that the respondent must negotiate with its employees to secure performance of a contract already made to the same extent as any other employer might be required to negotiate with his employees over the terms of a contract to be made in the future.

The Government implies that the respondent owed a duty to abandon the existing contract and negotiate a new one on materially different terms.

Whatever duty respondent owed as to negotiating to secure performance of its existing contract would seem to be satisfied by two months negotiations. The negotiations were honestly and sincerely carried on. They were in pursuance of a lawful purpose. Even the Board was compelled to find that if on August 21st respondent had told the MESA of the closing of the plant and that the MESA employees would be recalled only on the basis of the employees performing their contract, they would have struck. The respondent, therefore, had reached an impasse and the wilful refusal of the MESA employees to permit respondent to operate its plant under the contract, was a breach of their contract and a cause for their discharge.

Each of the errors assigned by the Government is inconsistent with the Board's theory of the immateriality of the contract and its breach. Each assumes the existence of facts contrary to the Board's evidential findings and to the admitted facts in the record. Therefore, all being predicated upon a false foundation of law and fact, are not well taken.

THE BOARD'S ORDER.

The Board's order (R. 41, 42), if enforced, would have rewarded the Complaining Employees for their wilful breach of contract and punished the respondent for believing that the contract with its employees imposed upon them an obligation to perform and acting on that belief.

Section 10 (c) of the Act limits the Board to requiring employers to cease and desist from unfair labor practices and to ordering employers "to take such affirmative action *** as will effectuate the policies of this Act." Referring to this section this Court said:

"We think that this authority to order affirmative action does not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he engaged in unfair labor practices, even though the Board be of the opinion that the policies of the Act might be effectuated by such an order."

Consolidated Edison Co. etc. et al. vs. NLRB, 83 L. ed. October Term, 1938, Adv. Ops. pages 131, 144.

The Board's decision did not define the rights of the parties. It did not settle the question of departmental seniority. It still left the dispute pending and undecided. The order could not possibly serve to effectuate any of the policies of the Act.

Consider the practicalities of the situation.

The respondent was ordered to offer to the Complaining Employees reinstatement to their former positions "with all the rights and privileges previously enjoyed." What were those rights and privileges?

Should the respondent have offered the employees reinstatement with departmental seniority in effect? The Board's order was silent on the point.

Should the respondent have waived the departmental seniority rule and offered reinstatement on that basis? The Board's order was silent on the point.

Should the respondent have reinstated the Complaining Employees and then immediately informed them that if they refused to work under the rule of departmental seniority it would again close the plant and they would be recalled? The Board's order was silent on the point.

The Board's order required respondent to reinstate with back pay at all events, and regardless of the willingness or the unwillingness of the Complaining Employees to work under the rule of departmental seniority. What could be more arbitrary?

The Board did not settle anything by its decision. Unless respondent waived departmental seniority the controversy would still have existed and the Complaining Employees would have continued to refuse to work. What then? The one simple question which was determination of the rights of the parties, namely, their respective rights under the contract, the Board refused to decide, holding that to be immaterial and irrelevant. How could the issue which had occupied the attention of the parties for two months of negotiations be immaterial and irrelevant?

Giving full effect to the admitted facts and to all evidential findings of the Board which were supported by substantial evidence, and, finding no basis for the Board's conclusion that the Complaining Employees were discharged because of their union membership, the Court below proceeded to give effect to respondent's contract and adjudicated the rights of the parties in the light of its breach of the contract by the respondent towards the Complaining Employees. We submit that there could be no proper determination of the rights of the contending parties otherwise, and that because the order was based on findings of fact and conclusions of law which entirely disregarded the contract, it was properly set aside.

CONCLUSION.

It is unreasonable to believe that respondent would have proceeded as it did after August 21st unless it were confronted with a condition in its plant which it despaired of correcting in any other way. It is unreasonable to believe that in so doing it was motivated by opposition to the right of its employees to organize and bargain collectively when it had at all times permitted them to freely exercise all such rights, had made contracts with them, and after reaching an impasse with them, filled their places by immediately making contract with another "outside" union.

It was arbitrary of the Board to find against the respondent when respondent's lawful purpose is corroborated by the evidential findings of the Board, by admissions of the Complaining Employees, and by other evidence in the record which is not denied.

On the record the Court below felt compelled to set aside the Board's order. We respectfully submit that its action in so doing should be affirmed.

Respectfully submitted,

HARRY E. SMoyer,

WELLES K. STANLEY,

Counsel for the Respondent.



SUPREME COURT OF THE UNITED STATES.

No. 274.—OCTOBER TERM, 1938.

National Labor Relations Board, Petitioner, vs. The Sands Manufacturing Company.	} On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.
---	---

[February 27, 1939.]

Mr. Justice ROBERTS delivered the opinion of the Court.

The Circuit Court of Appeals denied the petition of the National Labor Relations Board for enforcement of an order against the respondent and granted the respondent's petition to set aside the order.¹ We issued the writ of certiorari because of alleged conflict.²

After complaint, answer, and hearing, the Board found that the respondent, an Ohio corporation which manufactures water heaters in Cleveland, had engaged, and continued to engage, in unfair labor practices as defined by Sec. 8, subsections (1), (3), and (5) of the National Labor Relations Act,³ and ordered the company to cease and desist from violating those provisions and to offer reinstatement to former employes with compensation for loss of wages from September 3, 1935.⁴

The respondent contends and the court below held that upon the findings of fact, and the uncontradicted evidence, the Board's conclusions are without support in the record. The petitioner insists that there is evidence to support them. From the findings, and the uncontradicted evidence, these facts appear: In the spring of 1934 most of respondent's employes joined the Mechanics Educational Society of America (hereinafter called "MESA"), an independent labor organization. The respondent manifested no op-

¹ 96 F. (2d) 721.

² See *Jeffery-DeWitt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134.

³ Act of July 5, 1935, c. 372, 49 Stat. 449, 452; U. S. C. Supp. III, Tit. 29, §158.

⁴ 1 N. L. R. B. 546.

2 *National Labor Relations Board vs. The Sands Mfg. Co.*

position to their so doing, expressed its willingness that its men join any organization they chose, and readily met with a shop committee of the union to discuss grievances and working conditions. An agreement effecting an increase of wages, and affecting working conditions, was entered into between the respondent and the union. Although limited in term to sixty days it was continued, by mutual agreement, and under it all matters of controversy between employer and employees were settled by conference between the shop committee of the union and officials of the company.

In May 1935 the committee demanded, and the company refused, an increase of wages. A strike was called, but negotiations went on between the company and the union. All differences were adjusted save that the company was unwilling to reinstate certain men alleged to be incompetent. The union insisted that these men be taken back and thereafter be afforded a hearing by the management and the shop committee. When work was resumed the company did not permit the men in question to return. Thereupon a second strike was called. Negotiations again ensued as a result of which the shop committee agreed to draft and submit a contract to the respondent. This was done. The management demanded certain changes in the draft, to which the committee agreed; a contract extending to March 1, 1936, was executed on June 15, 1935, and the men returned to work. The agreement provided that the company would recognize the shop committee as representing the employees for collective bargaining; that no employee should be discharged without a hearing before the shop committee and the management; that certain employees should be discharged and not rehired; that stipulated notice should be given of layoffs due to shortage of work; that new employees might join any labor organization they chose. It also covered wages and hours of work. It further provided: "In case of a misunderstanding between the management and the employees, the committee shall allow the management forty-eight hours to settle the dispute and, if then unsuccessful, the committee shall act as they see fit." Provisions as to seniority will be presently stated.

In 1934 the company had an opportunity to procure a government order. Its officers conferred with the men and stated that they would take the government order if assured that no labor trouble would interfere with its execution. On receiving this assurance the order was taken and the working force more than

doubled by the employment of new men. It was agreed with the union that these men might join the MESA and in fact many of them did so. It was also agreed that when the government order was finished these new men should be discharged so that the old men could remain at work.

The company's plant was divided into a number of departments, one of which was the machine shop. The wage scales differed in different departments and the foremen and old men whom the company employed in each department received higher wages than new men in the same department. The company had had a practice of keeping the old men at work, in case business was slack, by transferring them from their own departments to others at their regular pay. When negotiations were under way for the agreement of June 15, 1935, the company insisted on discontinuing this practice of transferring old men from one department to another, stating that it would recognize, as theretofore, the seniority rights of old men but only in the departments in which particular men belonged. The management insisted that the practice of transferring men from one department to another resulted in inefficiency. The Board has found that the company in fact disapproved of the practice because it resulted in paying higher wages than would have been the case had the new men been retained or recalled to the busy department instead of transferring old men from other departments thereto. As a result of the insistence of the respondent, certain paragraphs of the proposed draft submitted by the employees were altered. These paragraphs follow, with the alterations demanded by the management in italics:

"(5) That when employees are laid off, seniority rights shall rule, *and by departments.*

(6) That when one department is shut down, men from this department will not be transferred or work in other departments until all old men *only* within that department, who were laid off, have been called back.

(7) That all new employees be laid off before any old employees, in order to guarantee if possible at least one week's full time before the working week is reduced to three days."

On June 17, 1935, the company hired approximately 30 additional men, some of whom had worked for the respondent while the government order was being filled. By the middle of July work was becoming slack and respondent proceeded to reduce its working

4 *National Labor Relations Board vs. The Sands Mfg. Co.*

force. About July 15, 1935, after conferences between the management and the employees, all the men in the tank heater department except the foreman were laid off.

In the agreement of June 15, 1935, the 31 men who were employes of the respondent prior to the government order of 1934 were designated as "old men" and those employed while the government order was being filled were "new men". About July 30, 1935, a notice was posted on the time clock in the plant that the new men would be laid off on July 30 and the old men would be laid off on August 2, 1935. After the layoff of the new men another notice was posted to the effect that the plant would be operated with the old men on a schedule of three days a week.

Thus, by the end of July or the beginning of August, some departments were being operated on a part time basis and others had been practically shut down. At or about this time, the respondent wished to increase the working force in the machine shop, the key department, while at the same time shutting down the other departments. Repeated conferences were held between the management and the shop committee in reference to this matter. The positions of the respondent and the employes were diametrically opposed. The management contended that new men, experienced in machine shop work, be employed in preference to the old men. The shop committee contended that, under the agreement of June 15, 1935, the respondent could not hire any new men for the machine shop as long as old men were still laid off. The management claimed that the shop committee was insisting upon a violation of Article 5 of the agreement. On August 19th an officer conferred with the shop committee and announced that the company would either keep the machine shop running according to the company's plan or temporarily close the plant. The committee was requested to confer with the employes and communicate their decision. After conference with the employes the committee stated that the company would not be allowed to run the machine shop unless it transferred old men in lieu of new men to that shop, and that if it did not comply with this condition it could close the plant. Accordingly, on August 21st, notice was posted that the plant would be closed until further notice.

August 26th and 27th officers of respondent negotiated with the International Association of Machinists, an affiliate of the American Federation of Labor, and, on August 31st, made a contract

with that union effective September 3rd. It also recruited labor from the county relief organization. Practically all of the employees so obtained were members of the International. It offered reemployment to several of the old MESA members, as foremen, on the basis of annual employment at a lower hourly wage instead of the higher hourly wage theretofore paid them, subject to layoffs. The offer was refused. September 3rd the plant reopened. On September 4th, a representative of MESA called an officer of respondent and demanded a conference. The demand was refused on the ground that the men had been discharged. The MESA picketed the plant for about a month thereafter.

The Board held that the company had refused to bargain collectively with the representatives of its employees as required by Section 8(5) of the Act; had discriminated in regard to hire or tenure of employment and discouraged membership in a labor organization contrary to the provisions of Section 8(3); and, in violation of Section 8(1), had interfered with, restrained, and coerced its employees in the exercise of the right of self-organization, affiliation with labor organizations and collective bargaining as guaranteed by Section 7. The Circuit Court of Appeals disagreed with these conclusions. We hold that its decision was right.

First. The petitioner urges the correctness of the ultimate conclusion that the respondent's conduct permits no reasonable inference save that the employees were locked out, discharged, and refused employment because they were members of the MESA and had engaged in concerted activities for the purpose of collective bargaining. We think the conclusion has no support in the evidence and is contrary to the entire and uncontradicted evidence of record.

The respondent did not attempt to prevent organization of its employees or discourage their affiliation with MESA or interfere with their relations with that body. There is no evidence of espionage or coercion by the company. Immediately upon the unionization of the men in the spring of 1934, the respondent recognized and conferred with the shop committee whenever requested so to do. May 2, 1934, it entered into an agreement with the union. It consulted the union respecting hiring of additional employees for the filling of the government order in the autumn of 1934 and complied with its promise to discharge additional men hired for this purpose when the order had been completed. All but three of the men hired became members of MESA without objec-

6 *National Labor Relations Board vs. The Sands Mfg. Co.*

tion on the part of the company. From May 1934 to May 1935 the company negotiated with the union and the latter never had any trouble in getting meetings with the management. When, in 1935, a strike was called as a result of the refusal of the shop committee's demand for a wage increase, the company continued negotiations during the strike and made an oral agreement under which the strikers returned to work. When three days later they struck again because of a refusal to reinstate some of their number, although a representative of MESA said several of these men might be incompetent, the company took the men back and continued to negotiate with the union with the result that a draft of a contract was submitted by the shop committee. After the company had insisted on certain changes with respect to departmental seniority, the draft ripened into a contract June 15, 1935.

Thereafter the respondent had hearings with the shop committee as to the discharge of an employe for incompetence and there is no suggestion that, between June 15th and August 21st, it failed to live up to its contract in any respect. Repeated meetings were held with the shop committee to discuss the terms of the contract respecting departmental seniority. The evidence of the members of the shop committee demonstrates that this matter was fully discussed before the contract was executed and that the members of the committee understood the company's position and the reason for the alterations in the committee's draft. Throughout the summer of 1935 the company, while adhering to its position, attempted to accommodate its practices to the demands of the shop committee, evidently in order to avoid a strike. When the final conference of August 19th took place the company's manager made it clear to the committee that he desired to operate the machine shop with the new men belonging in that department and when the committee advised him this would not be permitted he asked them to go to the men and find out whether the proposed operation would be permitted or whether the plant would have to be shut down. On August 21st the committee brought back a reply to the effect that the company could shut down the plant but could not operate the machine shop on the principle of departmental seniority. The company then closed the plant and did not open it until it had employed new men under a contract with another union which gave it the option to enforce departmental seniority. Save for one item of evidence, this is all the record discloses to indicate that the

discharge and replacement of the men arose from a discrimination against them for union activities and the exercise of the right of collective bargaining. Manifestly it is not only insufficient to sustain any such conclusion but definitely refutes it. The Board supports the conclusion by reference to the testimony of two men. One, Norman, who was, with the union's consent, discharged after the agreement of June 15, 1935, for incompetency, testified he thought he was discharged as a result of a grudge. He said that in June, one McKiernan, a shipping clerk who was his superior, told him when he complained about his discharge: "I will tell you; there is a lot more of this than you and I know of" . . . "I will get you back when we break this union up" . . . There is the further testimony of a witness Rudd who says that the superintendent said to him in June, in effect, that it would be better to have the A. F. of L. union as they were more conservative and not so likely to strike. This was just after MESA had called two strikes in the plant. Neither of the men who are quoted held such a position that his statements are evidence of the company's policy even in June, two months before the discharge, and the inference of hostility to MESA drawn from their testimony does not, in any event, amount to a scintilla when considered in the light of respondent's long course of conduct in respect of union activities and in dealing freely and candidly with MESA.

Second. The Board held that respondent violated the obligation imposed upon it by the statute to bargain collectively with representatives of its employees. The legislative history of the Act goes far to indicate that the purpose of the statute was to compel employers to bargain collectively with their employees to the end that employment contracts binding on both parties should be made.⁵ But we assume that the Act imposes upon the employer the further obligation to meet and bargain with his employees' representatives respecting proposed changes of an existing contract and also to discuss with them its true interpretation, if there is any doubt as to its meaning. Upon this basis the respondent was not deficient in the performance of its duty.

The contract provided for departmental seniority, in sections 5 and 6, and section 7 did not create any ambiguity on the subject. Moreover, the record makes it clear that the committee which

⁵ Report No. 573 of Senate Committee on Education and Labor, 74th Cong., 1st Sess., p. 12.

8 *National Labor Relations Board vs. The Sands Mfg. Co.*

negotiated the contract on behalf of the union fully understood its terms in the same sense as did the respondent. In this situation how often and how long was the company bound to continue discussion of the committee's demand that the provisions of the contract should be ignored? It is to be borne in mind that section 30 of the contract provided that if the company did not meet the committee's views within forty-eight hours the employees reserved full liberty of action and this meant that if the company did not accede to demands a strike might follow.

We come then to consider the situation of the respondent in August 1935. The Board has found that it desired to operate its machine shop in accordance with its honest understanding of the contract. Its motive, whether efficiency or economy, was proper. It had stated its views to the committee. The committee was adamant; its stand was that the company could close its entire plant if it chose, but it could not operate the machine shop in accordance with the provisions of the contract. If it attempted the latter alternative a strike was inevitable. The Board found that it was inconceivable that the employees would have accepted the company's construction of the contract even if they had been threatened with discharge at the time. It is evident that the respondent realized that it had no alternative but to operate the plant in the way the men dictated, in the teeth of the agreement, or keep it closed entirely, or have a strike. When the representatives of the two parties separated on August 21, no further negotiations were pending, each had rejected the other's proposals, and there were no arrangements for a further meeting. On the following days the factory was closed.

The Board finds that, in this situation, the respondent was under an obligation to send for the shop committee and again to reason with its members or to wait until the situation became such that it could operate its whole plant without antagonizing the employees' views with respect to departmental seniority. We think it was under no obligation to do any of these things. There is no suggestion that there was a refusal to bargain on August 21st. There could be, therefore, no duty on either side to enter into further negotiations for collective bargaining in the absence of a request therefor by the employees.* No such request was made prior to

* Compare *National Labor Relations Board v. Columbia Enameling and Stamping Co.*, No. 229, Oct. T., 1938, p. 5.

September 4th. Respondent rightly understood that the men were irrevocably committed not to work in accordance with their contract. It was at liberty to treat them as having severed their relations with the company because of their breach and to consummate their separation from the company's employ by hiring others to take their places. The Act does not prohibit an effective discharge for repudiation by the employe of his agreement, any more than it prohibits such discharge for a tort committed against the employer.⁷ As the respondent had lawfully secured others to fill the places of the former employes and recognized a new union, which, so far as appears, represented a majority of its employes, the old union and its shop committee were no longer in a position on September 4th to demand collective bargaining on behalf of the company's employes.

It is urged that the company's offer to re-employ four men as foremen on the basis of guaranteed annual compensation, at a lower hourly rate than had theretofore been paid them, is evidence to support the Board's finding of a refusal to bargain collectively with the union. The argument is that if the company had made a similar offer to all of the men this might have formed a basis of compromise, since one of the employes to whom an officer talked indicated that the men might be willing to take a cut in wages; but there is no evidence that the company had any thought of offering a similar contract to others than the foremen of departments, and the breach of contract of which the men were guilty left the company under no obligation to initiate negotiations for a new and different contract of employment with them.

Third. Certain occurrences subsequent to August 21, 1935, are urged by the Board in support of its finding that respondent's discharge of its forty-eight employes constituted discrimination against the union and failure to bargain collectively. The first of these is its application to the International Association for men and its making an agreement with that union on August 26th and 27th. If, as we have held, the respondent was confronted with a concerted refusal on the part of MESA to permit its members to perform their contract there was nothing unlawful in the company's attempting to procure others to fill their places.⁸ If the respondent

⁷ Compare *National Labor Relations Board v. Fansteel Metallurgical Corp.*, No. 436, Oct. T., 1938, p. 6ff.

⁸ Compare *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, 345.

10 *National Labor Relations Board v. The Sands Mfg. Co.*

was at liberty to hire new employees it was equally at liberty to make a contract with a union for their services.⁹

The offering of re-employment to four of the old employees, upon a new and different basis, is said to constitute discrimination against MESA, but the answer is that if the whole body of employees had been lawfully discharged the law does not prohibit the making of individual contracts with men whose prior relations had thereby been severed.¹⁰

Fourth. The Board found as a fact that in offering re-employment to two of its old men the respondent stipulated as a condition that they join the International union. The finding is sharply challenged but, as there is evidence in support of it, we accept it. Based upon this finding the Board contends this stipulation in connection with the offer to hire the men was a violation of Section 8(3) of the Act independent of any of the violations flowing out of the discharge and refusal to re-employ the men as a body. The contention is irrelevant to any issue in the cause. The complaint alleges that the discharge of the men constituted an unfair labor practice in violation of Section 8(1) and (3) and that the execution of the agreement with the international association constituted an unfair labor practice under Section 8(5). It nowhere refers to any discrimination in hiring any man or men or charges any violation in connection therewith.

The decree is

Affirmed.

Mr. Justice BLACK and Mr. Justice REED dissent.

Mr. Justice FRANKFURTER took no part in the consideration or decision of this case.

A true copy.


Test:

Clerk, Supreme Court, U. S.

⁹ Compare *Consolidated Edison Co. v. National Labor Relations Board*, 291 U. S. 19, Oct. T., 1933, p. 16.

¹⁰ Compare *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, 44, 45; *National Labor Relations Board v. Fawcett Corp.*, No. 436, Oct. T., 1933, p. 10.

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W. WASHINGTON, D.C. 20037. PHONE (202) 333-6393

25

38-66

